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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 42

**W. J. MEREDITH, JAMES G. MARTIN AND A. R.
OHMART, PETITIONERS,**

vs.

THE CITY OF WINTER HAVEN

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT**

PETITION FOR CERTIORARI FILED APRIL 14, 1943.

CERTIORARI GRANTED MAY 24, 1943.

INDEX

PAGE

Bill of Complaint	1
Exhibit "A"—Minutes of Special Meeting of The City Commission of the City of Winter Haven, Fla., held on 6/24/33	27
Exhibit "B"—Minutes of Special Meeting of The City Commission of the City of Winter Haven, Fla., held on 3/7/34	86
Exhibit "C"—Schedule #1—List of City of Winter Haven, Fla., General Refunding Series A Bonds 3½/6% Dated 4/1/33 ...	94
Exhibit "D"—Photostat of Notice of Bond Re- demption, City of Winter Haven, Florida, appearing in The Winter Haven Daily Chief, on 8/2/41	97
Summons issued on 9/9/41 and Marshal's Return thereon (Omitted)	98
Motion of defendants to dismiss and Notice of Motion	98
Order dated 3/7/42 granting Motion of defendants to dismiss, etc.	100
Amended Bill of Complaint	101
Exhibit "E"—Proceedings in Case George An- drews vs. City of Winter Haven, Florida State Court	109
Bill of Complaint	110
Exhibit "A"—Contract between City of Winter Haven, Fla., and R. E. Crummer and George W. Sim- mons, Jr., dated 5/16/33	119
Exhibit "B"—Agreement between Leedy, Wheeler & Co., et al., and City of Winter Haven, Florida, dated 10/7/40	135

INDEX—Continued

PAGE

Amended Bill of Complaint—(Continued):

Exhibit "E"—(Continued):

Bill of Complaint—(Continued):

Exhibit "C"—City of Winter Haven

General Refunding Bond Issue of

1933, Series "A" Due April 1, 1963 142

Answer of defendant to Bill of Complaint 147

Motion of Plaintiff for Decree on Bill of
Complaint and Answer to Bill of
Complaint 154

Judgment, entered 6/23/41 155

Notice of Appeal 163

Assignment of Errors 165

Statement of Questions proposed for Adjudi-
cation on Appeal 170

Stipulation of Counsel, dated 6/25/41 173

Directions to Clerk or Statement of Plead-
ings and Proceedings to be Incor-
porated in Record 175

Mandate of the Supreme Court of Florida,
dated 10/3/41 177

Clerk's Certificate, Florida State Court 179

Default, entered 4/14/42 180

Joint Stipulation of Counsel relative to default, etc. 181

Judgment, entered 6/6/42 182

Notice of Appeal 183

Appeal Bond 183

Appellants' Designation of Contents of Records on
Appeal 185

Clerk's Certificate 188

INDEX—Continued

	PAGE
Proceedings in U. S. C. C. A., Fifth Circuit	189
Argument and submission	189
Opinion of the court, Hutcheson, J.	189
Dissenting opinion, Sibley, J.	198
Judgment	200
Petition for rehearing	201
Order denying rehearing	206
Motion and order staying mandate	206
Clerk's certificate (omitted in printing)	209
Order allowing certiorari	209

Complaint filed Sept. 9, 1941, in the following words and figures to-wit:

COMPLAINT

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF FLORIDA,
TAMPA DIVISION, CIVIL ACTION.

No. 420-Civ. T.

W. J. MEREDITH, JAMES G. MARTIN, and
A. R. OHMART.

Plaintiffs.

versus

THE CITY OF WINTER HAVEN, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, E. S. HORTON, as Mayor-Commissioner of the said City of Winter Haven, JOHN A. SNIVELY, E. S. HORTON, GEORGE KENNEDY, K. T. HAYNES, SR., and E. R. DANTZLER, as members of the City Commission of the said City of Winter Haven, W. W. JAMISON, as City Manager of the said City of Winter Haven, and O. ROSCOE WAY as City Auditor and Clerk of the said City of Winter Haven, and as ex officio Assessor of Taxes of the said City of Winter Haven, and as City Treasurer and Collector of the said City of Winter Haven.

Defendants.

I. (a). The plaintiffs, W. J. Meredith, James G. Martin and A. R. Ohmart, are each citizens of the State of Kansas, and reside at Wichita, in the said State of Kansas. The defendant, the City of Winter Haven, is a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, is a citizen of the State of

Florida and is located in the Southern District of Florida. The defendant, E. S. Horton, is a citizen of the State of Florida, resides at Winter Haven, Polk County, Florida, and is the Mayor-Commissioner of the said City of Winter Haven. The defendants, John A. Snively, E. S. Horton, George Kennedy K. T. Haynes, Sr., and E. R. Dantzler, are each citizens of the State of Florida, reside at Winter Haven, Polk County, Florida, and are members of the City Commission of the said City of Winter Haven. The defendant, W. W. Jamison, is a citizen of the State of Florida, resides at Winter Haven, Polk County, Florida, and is the City Manager of the said City of Winter Haven. The defendant, O. Roscoe Way, is a citizen of the State of Florida, resides at Winter Haven, Polk County, Florida, is the City Auditor and Clerk of the said City of Winter Haven, is ex officio Assessor of Taxes of the said City of Winter Haven, and is City Treasurer and Collector of said City of Winter Haven.

(b) The matter in controversy herein exceeds, exclusive of interest and costs, the sum or value of \$3,000.00.

(c) This is an actual controversy, not with respect to Federal taxes, between the plaintiffs herein and the defendants herein, relative to the matters set forth in this complaint.

2. The Town of Winter Haven was originally incorporated in and by Chapter 6413, Laws of Florida, Acts of 1911. In and by Chapter 7723, Laws of Florida, Acts of 1917, said Town of Winter Haven was abolished and a new Town of Winter Haven was created. It was provided in said Chapter 7723 that all debts and obligations of the former Town of Winter Haven should be and remain binding and in full force upon the new Town of Winter Haven thereby created. In and by Chapter 11,299, Laws of Florida, Acts of 1925, a new charter for the City of Winter

Haven was enacted. In said Chapter 11,299 it was provided that no obligation or contract of the municipality, including bonds theretofore issued, shall be impaired or avoided by such new charter, but that such debts and obligations shall pass to and be binding upon the new municipality thereby created.

3. The City of Winter Haven had prior to July 24, 1933, made, executed, and delivered writings obligatory, or bonds, under seal, which said writings obligatory, to the extent they were then outstanding and unpaid, were fully described in a Resolution adopted by the City Commission of the City of Winter Haven at a meeting held on July 24, 1933, copy of which said Resolution is embodied in Excerpts from the Minutes of the Meeting of the City Commission held on July 24, 1933, attached hereto marked Exhibit A and by reference made a part hereof as fully and completely as if herein set forth at length. The bonds then outstanding were payable on a definite maturity date and were not subject to call for redemption prior to the maturity date thereof.

4. Said Resolution of July 24, 1933 (Exhibit A), was amended by a Resolution adopted by the City Commission of the City of Winter Haven at a meeting held on March 7, 1934; copy of which said amending Resolution is embodied in Excerpts from the Minutes of the Meeting of the City Commission held on March 7, 1934, attached hereto marked Exhibit B and by reference made a part hereof as fully and completely as if herein set forth at length.

5. (a) By said Resolution of July 24, 1933 (Exhibit A), as amended by Resolution of March 7, 1934 (Exhibit B), provision was made for the issuance of \$2,148,054.78 of negotiable coupon bonds of the City of Winter Haven, to be known as City of Winter Haven, Florida, General Refunding Bonds, Issue of 1933, for the purpose of refunding

a. like amount of legal and valid outstanding bonds and interest of said City, specifying the form of such refunding bonds, and providing for the manner of issuance and payment thereof.

(b) As is shown by said Resolution of July 24, 1933 (Exhibit A), said City of Winter Haven, at the time of its adoption, was in default in the payment of principal and interest on its bond indebtedness. As of April 1, 1933, the accumulated defaulted interest on the bond indebtedness of the City of Winter Haven amounted to around \$195,000.00 and the defaulted principal amounted to around \$375,000.00. The City had then been in default in payment of its bond indebtedness continuously since 1931. The governing officials of the City of Winter Haven represented to its creditors that the City was then wholly unable to meet the contract requirements of the bond indebtedness referred to in said resolution according to the express terms of the bonds and interest coupons then outstanding, and requested its creditors to exchange the bonds and interest coupons outstanding for refunding bonds to be issued under said resolution, the outstanding 6 per cent obligations to be exchanged for City of Winter Haven General Refunding Bonds, Series A, in the form set out in said resolution, with interest coupons as therein provided, the outstanding 5 1/2 per cent obligations to be exchanged for City of Winter Haven General Refunding Bonds, Series B, in the form set out in said resolution, with interest coupons as therein provided.

(c) Said resolution of July 24, 1933 (Exhibit A), provides that the General Refunding Bonds, Series A, shall be dated April 1, 1933, and shall be numbered, be in denomination, and subject to the right of prior redemption, as therein provided, shall mature as follows:

Numbers	Denomination	Amount	Maturity
1	\$ 123.58	123.58	
2 to 281	100.00	28,000.00	
282 to 720	1,000.00	439,000.00	April 1, 1948
721 to 935	1,000.00	215,000.00	April 1, 1949
936 to 1146	1,000.00	211,000.00	April 1, 1950
1147 to 1369	1,000.00	223,000.00	April 1, 1951
1370 to 1570	1,000.00	201,000.00	April 1, 1952
1571 to 1610	1,000.00	40,000.00	April 1, 1953
1611 to 1657	1,000.00	47,000.00	April 1, 1954
1658 to 1704	1,000.00	47,000.00	April 1, 1955
1705 to 1750	1,000.00	46,000.00	April 1, 1956
1751 to 1796	1,000.00	46,000.00	April 1, 1957
1797 to 1840	1,000.00	44,000.00	April 1, 1958
1841 to 1877	1,000.00	37,000.00	April 1, 1959
1878 to 1914	1,000.00	37,000.00	April 1, 1960
1915 to 1953	1,000.00	39,000.00	April 1, 1961
1954 to 1990	1,000.00	37,000.00	April 1, 1962
1991 to 2210	1,000.00	220,000.00	April 1, 1963

of which bonds \$71,000 thereof Nos. 319 to 389, due April 1, 1948, were by resolution of March 7, 1934 (Exhibit B) provided to be canceled and bonds issued in lieu thereof as follows:

Numbers	Denomination	Amount	Maturity
1 C to 340 C	\$ 100.00	\$34,000.00	April 1, 1948
1 D to 74 D	500.00	37,000.00	April 1, 1948

(d) Said resolution of July 24, 1933 (Exhibit A) provides that the General Refunding Bonds, Series A, and the coupons thereto attached and the validation certificate to be indorsed thereon, shall be in substantially the following form:

United States of America,

State of Florida,

County of Polk,

No. City of Winter Haven, \$

General Refunding Bond Issue of 1933,

Series "A"

Know All Men By These Presents: That the City of Winter Haven in the County of Polk, State of Florida, hereby acknowledges itself to be indebted and promises to pay to bearer the sum of Dollars on the first day of April 19.... with the option of prior redemption as hereinafter provided, and to pay interest on said sum as hereinafter specified from the date hereof until paid or until called for redemption, said interest to be payable semi-annually on the first days of April and October of each year upon presentation and surrender of the attached coupons as they severally become due. Both principal and interest of this bond are payable in lawful money of the United States of America at the Central Hanover Bank and Trust Company of New York City, in the City of New York, New York, and for the prompt payment of this bond and interest thereon as the same become due, the full faith, credit and all the resources of said City of Winter Haven are hereby irrevocably pledged.

Interest on the amount of this bond as evidenced by the interest coupons hereto attached shall be enforceable and collectible at the rate of three and one-half per cent per annum from date hereof to April 1, 1935; at the rate of four per cent per annum from and including April 1, 1935 to April 1, 1936; at the rate of four and one-half per cent

per annum from and including April 1, 1936 to April 1, 1937; at the rate of five per cent per annum from and including April 1, 1937 to April 1, 1943; and at the rate of six per cent per annum thereafter; and if this bond shall not have been called and retired as hereinafter provided prior to maturity the full interest at the rate of six per cent per annum less the amount theretofore paid from the date hereof to said maturity date shall also at that time be enforceable, collectible and paid upon presentation and surrender of said bond. The right is hereby reserved to call and redeem this bond on any interest payment date according to the following schedule:

On or prior to April 1, 1943, at par, accrued interest at the rate then prevailing as enforceable and collectible plus one-half of the deferred or accumulated interest for ten years.

On or prior to two years before the maturity of the respective bonds and during the period of time from April 1, 1943 to and including April 1, 1953, at par, accrued interest at the rate then prevailing as enforceable and collectible plus three-fourths of the deferred or accumulated interest for ten years.

From April 1, 1953 to and including April 1, 1963 at par, accrued interest at the rate then prevailing as enforceable and collectible plus the full deferred or accumulated interest for ten years.

However, at maturity this bond shall be payable at par plus the full amount of deferred interest which in this case shall be par, accrued interest at the rate then prevailing as enforceable and collectible and the full deferred interest being \$.....

In the event of the exercise of such right, notice of such redemption will be given as provided by the resolution adopted by the governing authority of the City of Winter Haven authorizing the issuance of this bond. Said bond when so called shall cease to bear interest on such redemption date and the interest otherwise payable at maturity to make up the total of six per cent except as provided in said call for redemption shall be deemed to be waived by the surrender by the holder of such called bond.

This bond shall be negotiable and is one of a series of bonds issued by the City of Winter Haven, for the purpose of refunding certain legal and valid indebtedness heretofore legally created by said City of Winter Haven, evidenced by bonds and interest thereon, for the payment of which the full faith and credit of said City of Winter Haven, have been and are legally pledged, and said series is issued under authority of and in full compliance with the Constitution and Laws of the State of Florida, including Chapter 15772, Laws of Florida, 1931, the provisions of the City Charter, and in pursuance of resolutions and proceedings of the City Commission of the City of Winter Haven, duly and legally adopted and taken.

And It Is Hereby Certified And Recited that all conditions and things required to be done precedent to and in the issuance of said bonds have been properly done, happened and been performed in regular and due form, as required by law, and that the indebtedness which is refunded by this series of bonds is a legally refundable, constitutional, subsisting and legal obligation of said City of Winter Haven, and that neither the indebtedness which is refunded nor this series of bonds, together with all the other indebtedness of said City of Winter Haven, exceed any limitation prescribed by the Constitution or Statutes of the State of Florida, and that before the issuance of this bond, provision has been made for the levy and

collection of a tax upon all the taxable property within said City of Winter Haven, which, together with other applicable revenue and income pledged to the payment of the interest and principal requirements, is sufficient in amount to provide for the payment of the principal and interest hereof as the same become due.

In Witness Whereof, the City of Winter Haven has caused this bond to be signed by its Mayor-Commissioner and attested by its City Auditor and Clerk under the corporate seal and the interest coupons hereto attached to be executed with the facsimile signatures of said Mayor-Commissioner and City Auditor and Clerk, which officials by the execution of this bond do each adopt as and for his own proper signature his respective facsimile signature appearing on said coupons, all as of the first day of April, 1933.

.....
Mayor-Commissioner, City of
Winter Haven, Florida.

Attested:

.....
City Auditor and Clerk, City of
Winter Haven, Florida.

(Form of interest coupon for semi-annual payments.)

No.

\$.....

On the first day of 19.... the City of Winter Haven, Polk County, Florida, will pay to bearer at the Central Hanover Bank and Trust Company of New York City, in the City of New York, New York, the sum of Dollars, being the then enforceable and collectible interest on its City of Winter Haven General Re-funding Bond Issue of 1933, Series "A", dated April 1, 1933.

No. unless said bond shall have been theretofore called for redemption.

.....
Mayor-Commissioner, City of
Winter Haven, Florida.

.....
City Auditor and Clerk, City of
Winter Haven, Florida.

(Form of Non-Interest Bearing, Non-Detachable Certificate or Coupon for representing deferred interest due at maturity.)

No. \$.....

On the first day of, 19..., the City of Winter Haven, Polk County, Florida, will pay to bearer at the Central Hanover Bank and Trust Company of New York City, in the City of New York, New York, the sum of Dollars, being the then enforceable, collectible and deferred interest on its City of Winter Haven General Refunding Bond Issue of 1933, Series "A", dated April 1, 1933, No. unless said bond shall have been heretofore called for redemption.

.....
Mayor-Commissioner, City of
Winter Haven, Florida.

.....
City Auditor and Clerk, City of
Winter Haven, Florida.

(Validation Certificate.)

Validated and confirmed by decree of the Circuit Court of the Judicial Circuit of Florida, in and for Polk County, rendered on the day of 1933.

.....
Clerk of the Circuit Court of
Polk County, Florida.

(e) Said resolution of July 24, 1933 (Exhibit A), provides that the General Refunding Bonds, Series B, shall be dated April 1, 1933, and shall be numbered, be in denomination, and subject to the right of prior redemption as therein provided, shall mature as follows:

Numbers	Denomination	Amount	Maturity
1	\$ 131.20		
2 to 169	100.00		
170 to 185	1,000.00	\$32,931.20	April 1, 1948
186 to 194	1,000.00	9,000.00	April 1, 1949
195 to 200	1,000.00	6,000.00	April 1, 1950
201 to 209	1,000.00	9,000.00	April 1, 1951
210 to 218	1,000.00	9,000.00	April 1, 1952
219 to 232	1,000.00	14,000.00	April 1, 1953
233 to 245	1,000.00	13,000.00	April 1, 1954
246 to 256	1,000.00	11,000.00	April 1, 1955
257 to 262	1,000.00	6,000.00	April 1, 1956
263 to 268	1,000.00	6,000.00	April 1, 1957
269 to 274	1,000.00	6,000.00	April 1, 1958
275 to 280	1,000.00	6,000.00	April 1, 1959
281 to 287	1,000.00	7,000.00	April 1, 1960
288 to 294	1,000.00	7,000.00	April 1, 1961
295 to 302	1,000.00	8,000.00	April 1, 1962
303 to 343	1,000.00	41,000.00	April 1, 1963

(f) Said resolution of July 24, 1933 (Exhibit A), provides that the General Refunding Bonds, Series B, and

the coupons thereto attached and the validation certificate to be indorsed thereon, shall be in substantially the following form:

United States of America,
State of Florida,
County of Polk,

No. City of Winter Haven. \$.....

General Refunding Bond Issue of 1933,
Series "B".

Know All Men By These Presents: That the City of Winter Haven in the County of Polk, State of Florida, hereby acknowledges itself to be indebted and promises to pay to bearer the sum of Dollars, on the first day of April, 19... with the option of prior redemption as hereinafter provided, and to pay interest on said sum as hereinafter specified from the date hereof until paid or until called for redemption, said interest to be payable semi-annually on the first days of April and October of each year upon presentation and surrender of the attached coupons as they severally become due. Both principal and interest of this bond are payable in lawful money of the United States of America at the Central Hanover Bank and Trust Company of New York City, in the City of New York, New York, and for the prompt payment of this bond and interest thereon as the same become due, the full faith, credit and all the resources of said City of Winter Haven are hereby irrevocably pledged.

Interest on the amount of this bond as evidenced by the interest coupons hereto attached shall be enforceable and collectible at the rate of three and one-half per cent per annum from date hereof to April 1, 1935; at the rate of 4 per cent per annum from and including April 1, 1935, to April 1, 1936; at the rate of four and one-half per cent per annum from and including April 1, 1936, to April 1, 1937;

at the rate of five per cent per annum from and including April 1, 1937, to April 1, 1943; and at the rate of five and one-half per cent per annum thereafter; and if this bond shall not have been called and retired as hereinafter provided prior to maturity, the full interest at the rate of five and one-half per cent per annum less the amount theretofore paid from the date hereof to said maturity date shall also at that time be enforceable, collectible and paid upon presentation and surrender of said bond. The right is hereby reserved to call and redeem this this bond on any interest payment date according to the following schedule:

On or prior to April 1, 1943, at par, accrued interest at the rate then prevailing as enforceable and collectible plus one-half of the deferred or accumulated interest for ten years;

On or prior to two years before the maturity of the respective bonds and during the period of time from April 1, 1943, to and including April 1, 1953, at par, accrued interest at the rate then prevailing as enforceable and collectible plus three-fourths of the deferred or accumulated interest for ten years;

From April 1, 1953, to and including April 1, 1963, at par, accrued interest at the rate then prevailing as enforceable and collectible plus the full deferred or accumulated interest for ten years.

However, at maturity this bond shall be payable at par plus the full amount of deferred interest which in this case shall be par, accrued interest at the rate then prevailing as enforceable and collectible and the full deferred interest being \$.....

In the event of the exercise of such right, notice of such redemption will be given as provided by the resolution adopted by the governing authority of the City of Winter

Haven authorizing the issuance of this bond. Said bond when so called shall cease to bear interest on such redemption date and the interest otherwise payable at maturity to make up the total of five and one-half per cent except as provided in said call for redemption shall be deemed to be waived by the surrender by the holder of such called bond.

This bond shall be negotiable and is one of a series of bonds issued by the City of Winter Haven, for the purpose of refunding certain legal and valid indebtedness heretofore legally created by said City of Winter Haven, evidenced by bonds and interest thereon, for the payment of which the full faith and credit of said City of Winter Haven have been and are legally pledged, and said series is issued under authority of and in full compliance with the Constitution and Laws of the State of Florida, including Chapter 15772, Laws of Florida, 1931, the provisions of the City Charter, and in pursuance of resolutions and proceedings of the City Commission of the City of Winter Haven, duly and legally adopted and taken.

And It Is Hereby Certified And Recited that all acts, conditions and things required to be done precedent to and in the issuance of said bonds have been properly done, happened, and been performed in regular and due form as required by law, and that the indebtedness which is refunded by this series of bonds is a legally refundable, constitutional, subsisting and legal obligation of said City of Winter Haven, and that neither the indebtedness which is refunded nor this series of bonds, together with all the other indebtedness of said City of Winter Haven, exceed any limitation prescribed by the Constitution or Statutes of the State of Florida, and that before the issuance of this bond, provision has been made for the levy and collection of a tax upon all the taxable property within said City of Winter Haven; which, together with other applicable reve-

nue and income pledged to the payment of the interest and principal requirements, is sufficient in amount to provide for the payment of the principal and interest hereof as the same become due.

In Witness Whereof, the City of Winter Haven has caused this bond to be signed by its Mayor-Commissioner and attested by its City Auditor and Clerk under the corporate seal and the interest coupons hereto attached to be executed with facsimile signatures of said Mayor-Commissioner and City Auditor and Clerk which officials by the execution of this bond do each adopt as and for his own proper signature his respective facsimile signature appearing on said coupons, all as of the first day of April, 1933.

Mayor-Commissioner, City of
Winter Haven, Florida.

Attested:

City Auditor and Clerk, City of
Winter Haven, Florida.

(Form of interest coupon for semi-annual payments.)

No.

\$

On the first day of 19.... the City of Winter Haven, Polk County, Florida, will pay to bearer at the Central Hanover Bank and Trust Company of New York City, in the City of New York, New York, the sum of Dollars, being the then enforceable and collectible interest on its City of Winter Haven General Refunding Bond Issue of 1933, Series "B", dated April 1,

1933, No., unless said bonds shall have been
theretofore called for redemption.

.....
Mayor-Commissioner, City of
Winter Haven, Florida.

.....
City Auditor and Clerk, City of
Winter Haven, Florida.

(Form of Non-Interest Bearing, Non-Detachable Certificate or Coupon for representing deferred interest due at maturity.)

No. \$.....

On the first day of, 19..., the City of Winter Haven, Polk County, Florida, will pay to bearer at the Central Hanover Bank and Trust Company of New York City, in the City of New York, New York, the sum of Dollars, being the then enforceable, collectible and deferred interest on its City of Winter Haven General Refunding Bond Issue of 1933, Series "B", dated April 1, 1933, No. unless said bond shall have been heretofore called for redemption.

.....
Mayor-Commissioner, City of
Winter Haven, Florida.

.....
City Auditor and Clerk, City of
Winter Haven, Florida.

(Validation Certificate.)

Validated and confirmed by decree of the Circuit Court of the Judicial Circuit of Florida, in and for Polk County, rendered on the day of 1933.

.....
Clerk of the Circuit Court of
Polk County, Florida.

(g) Said resolution of July 24, 1933 (Exhibit A), provides, in Section 11 thereof, among other things, as follows:

"All of said General Refunding Bonds, Series 'A', shall be callable as hereinafter set out, upon any interest payment date, according to the following schedule:

"On or prior to April 1, 1943, at par, accrued interest at the rate then prevailing as enforceable and collectible, plus one-half of the deferred interest for the period of ten years, such one-half of said deferred interest being \$72.50 on each \$1,000 bond, or at the same rate on bonds of smaller denomination.

"On or prior to two years before the maturity of the respective bonds and during the period of time from April 1, 1943; to and including April 1, 1953, at par, accrued interest at the rate then prevailing as enforceable and collectible, plus three-fourths of the deferred interest, being \$108.75 on each \$1,000 bond, or at the same rate on bonds of smaller denomination.

"For the period of time from April 1, 1953, to and including April 1, 1963, at par, accrued interest at the rate then prevailing as enforceable and collectible, plus the full deferred interest for the period of ten years, such full

deferred interest being \$145.00 on each \$1,000 bond, or at the same rate on bonds of smaller denomination.

"All of said General Refunding Bonds, Series 'B', shall be callable as hereinafter set out, upon any interest payment date, according to the following schedule:

"On or prior to April 1, 1943, at par, accrued interest at the rate then prevailing as enforceable and collectible, plus one-half of the deferred interest for the period of ten years, such one-half of said deferred interest being \$47.50 on each \$1,000 bond, or at the same rate on bonds of smaller denomination.

"On or prior to two years before the maturity of the respective bonds and during the period of time from April 1, 1943, to and including April 1, 1953, at par, accrued interest at the rate then prevailing as enforceable and collectible, plus three-fourths of the deferred interest, being \$71.25 on each \$1,000 bond, or at the same rate on bonds of smaller denomination.

"For the period of time from April 1, 1953, to and including April 1, 1963, at par, accrued interest at the rate then prevailing as enforceable and collectible, plus the full deferred interest for the period of ten years, such full deferred interest being \$95.00 on each \$1,000 bond, or at the same rate on bonds of smaller denomination.

"However, at the respective maturity dates all bonds shall be payable at par, accrued interest at the rate then prevailing as enforceable and collectible and the full deferred interest, being \$145.00 on each \$1,000 bond, or at the same rate on bonds of smaller denomination."

(h) Said resolution of July 24, 1933 (Exhibit A), provides, in Section 17 thereof, among other things, as follows:

"It is hereby the declared intention that said General Refunding Bonds are to be issued as of April 1, 1933, for the purpose of refinancing as of that date the like amount of indebtedness of said City of Winter Haven, Florida, then existing.

"General Refunding Bonds, Series 'A', bearing numbers 1 to 720, maturing April 1, 1948, shall be applied to the retirement of a like amount of interest coupons and interest outstanding and bonds maturing April 1, 1933, and prior thereto. General Refunding Bonds, Series 'A', bearing numbers 721 to 1990, inclusive, maturing in each of the years 1949 to 1962 inclusive, shall be applied to the retirement of a like amount of bonds maturing in each of the years of 1934 to 1947, inclusive, respectively; and General Refunding Bonds, Series 'A', bearing numbers 1991 to 2210, inclusive, maturing in the year 1963, shall be applied to the retirement of a like amount of bonds maturing as set out in the preamble of this resolution in the years 1948 and subsequent thereto.

"General Refunding Bonds, Series 'B', bearing numbers 1 to 169, inclusive, maturing April 1, 1948, shall be applied to the retirement of a like amount of interest coupons and interest outstanding; General Refunding Bonds, Series 'B', bearing numbers 170 to 185, inclusive, maturing April 1, 1948, shall be applied to the retirement of a like amount of bonds maturing April 1, 1933, and prior thereto. General Refunding Bonds, Series 'B', bearing numbers 186 to 302, inclusive, maturing in each of the years 1949 to 1962 inclusive, shall be applied to the retirement of a like amount of bonds maturing in each of the years 1934 to 1947 inclusive, respectively; and General Refunding Bonds, Series 'B', bearing numbers 303 to 343, inclusive, maturing in the year 1963 shall be applied to the retirement of a like amount of bonds maturing as set out in the preamble of this resolution, in the years 1948 and subsequent thereto.

"In all cases, coupons evidencing interest on the Bonds authorized to be refunded hereby, subsequent to April 1, 1933, must accompany the respective bonds when surrendered for exchange."

(i) Said Resolution of July 24, 1933 (Exhibit A), provides, in Section 19 thereof, as follows:

"All covenants, representation agreements and undertakings herein set out, as well as those appearing on the face of each of said General Refunding Bonds, shall constitute a contract with the holders of the General Refunding Bonds and shall be enforceable by suit, action or mandamus on behalf of any bondholder in any Court of competent jurisdiction whether or not a monetary default shall then prevail in the payment of the principal or interest of such General Refunding Bonds."

(j) Said resolution of July 24, 1933 (Exhibit A), provides, in Section 20 thereof, as follows:

"That if any clause, section, paragraph or provision of this resolution or of the General Refunding Bonds hereby authorized be declared unenforceable by any Court of final jurisdiction, it shall not affect or invalidate any remainder thereof, and if any of the bonds hereby authorized be adjudged illegal or unenforceable in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment."

(k) Said resolution of July 24, 1933 (Exhibit A), provides, in Section 21 thereof, as follows:

"That the Attorney for the City of Winter Haven, Florida, be, and he is hereby authorized and directed to take

appropriate proceedings in the Circuit Court of the Tenth Judicial Circuit of Florida, in and for Polk County, for the validation of said bonds, in accordance with the provisions of the General Laws of Florida, and is authorized to sign any pleadings in such proceedings for and on behalf of said City of Winter Haven, Florida."

6. Said General Refunding Bonds were validated and confirmed by decree of the Circuit Court, in and for Polk County, Florida, in statutory bond validation proceedings, under the applicable Florida Statutes. Said validation decree has never been reversed or modified, on appeal, or otherwise and the time for appealing therefrom has expired.

7. (a) The securities of which the plaintiffs are the owners, bearers, and holders, as hereinafter set forth, were issued in exchange for and upon the surrender and cancellation of original securities said issuance and surrender and cancellation, respectively, being under the terms of the resolution of July 24, 1933 (Exhibit A), as amended by the resolution of March 7, 1934 (Exhibit B).

(b) Said General Refunding Bonds were issued by the said City of Winter Haven, under the authority of and in full compliance with the Constitution and laws of the State of Florida, including Chapter 15.772, Laws of Florida, Acts of 1931, and the provisions of the Charter of the said City of Winter Haven, and after all acts, conditions and things required to be done precedent to and in the issuance of said General Refunding Bonds had been properly done, had happened and had been performed, in regular and due form, as required by law. Said General Refunding Bonds were issued and delivered in substantially the form set forth in said resolution, with interest coupons and validation certificate attached thereto, as provided in said resolution. Each of said General Refunding Bonds is signed

by the Mayor-Commissioner of the said City of Winter Haven and attested by the City Auditor and Clerk of the said City of Winter Haven. The interest coupons appurtenant to said General Refunding Bonds bear the fac simile signatures of said Mayor-Commissioner and of said City Auditor and Clerk..

(c) The plaintiffs are jointly the owners, bearers, and holders of the bonds and all coupons appurtenant thereto, due October 1, 1941, and subsequent thereto to maturity, described in schedule hereto attached marked Exhibit C and by reference made a part hereof as fully and completely as if herein set forth at length.

(d) The securities surrendered to the said City of Winter Haven in exchange for said General Refunding Bonds, with interest coupons appertaining thereto, were general obligations of the said City of Winter Haven and pledged the full faith, credit and resources of the said City of Winter Haven, and the statutes under which they were issued provided for the annual levy of an ad valorem tax for the principal, interest and sinking fund requirements of the same. Said General Refunding Bonds, and the interest coupons appertaining thereto, evidence the same indebtedness represented by the securities surrendered in exchange therefor. The plaintiffs are entitled to all the rights and privileges of bearers and holders of the obligations surrendered in exchange for said General Refunding Bonds, as re-incorporated and reaffirmed in said General Refunding Bonds, and the interest coupons appertaining thereto.

8. The said City of Winter Haven has authorized the issuance of new refunding bonds to refund said General Refunding Bonds, Issue of 1933, dated April 1, 1933, and unpaid interest thereon. Said City contemplates an exchange of the proposed new refunding bonds for such of

the General Refunding Bonds, Issue of 1933, hereinbefore referred to, as the holders thereof are willing to exchange for the proposed new refunding bonds, and a sale of new refunding bonds to provide the funds for use in calling and redeeming such of said General Refunding Bonds as the owners thereof are unwilling to exchange for the proposed new refunding bonds.

9. The said City of Winter Haven has obtained a decree validating the said proposed new refunding bonds.

10. The said City of Winter Haven contemplates selling sufficient of said proposed new refunding bonds to produce only enough cash to pay the principal of the General Refunding Bonds, Issue of 1933, so owned and held by the plaintiffs as aforesaid, without paying the deferred or accumulated interest which is specifically provided for in said General Refunding Bonds and in the aforesaid resolution authorizing their issuance.

11. The said City of Winter Haven has attempted to effect a call of certain General Refunding Bonds of the City of Winter Haven, hereinbefore referred to, including those owned and held by the plaintiffs as aforesaid, by publishing a notice, purporting to call said General Refunding Bonds for redemption on October 1, 1941, without providing for the payment of said deferred interest. A copy of said notice is hereto attached, marked Exhibit D, and by reference made a part hereof as fully and completely as if set forth herein at length.

12. All times have elapsed and all conditions have happened and been performed to entitle the plaintiffs to maintain this action.

Wherefore, plaintiffs demand:

1. That this Court will take jurisdiction of this cause and of the parties hereto and of the subject matter thereof.

2. That this Court will declare that as to the City of Winter Haven, Florida, General Refunding Bonds, Issue of 1933, dated April 1, 1933, owned and held by Plaintiffs, the said City has the right to call said bonds on the following basis only:

(a) If said bonds are called for payment on or before April 1, 1943, then said call shall be effective only if said City makes available funds for the payment of the principal of said bonds, plus the accrued interest thereon at the rate then prevailing as enforceable and collectible, plus one-half of the deferred or accumulated interest which shall have accrued as of the date of payment under any such call:

(b) If said bonds are called for payment after April 1, 1943, but on or before April 1, 1953, then said call shall be effective only if said City makes available funds for the payment of the principal of said bonds, plus the accrued interest thereon at the rate then prevailing as enforceable and collectible, plus three-fourths of the deferred or accumulated interest (all of said deferred interest having accrued on April 1, 1943); Provided, however that during this period no call for payment of said bonds whose maturity is less than two (2) years removed shall be effective unless said City makes available funds for the payment of the principal of said Bonds, plus the accrued interest thereon at the rate then prevailing as enforceable and collectible, plus three-fourths of the deferred or accumulated interest.

(c) If said bonds are called for payment after April 1, 1953, then said call shall be effective only if said City makes available funds for the payment of the principal of said bonds, plus accrued interest at the rate then prevailing as enforceable and collectible, plus the full amount of the deferred or accumulated interest.

3. That in the event this Court should hold that the obligation assumed by the City of Winter Haven to pay deferred interest on said City of Winter Haven General Refunding Bonds held by the plaintiffs is not enforceable, then this Court will declare that the plaintiffs are entitled to collect of and from the said City of Winter Haven, and the said City is obligated to pay to the plaintiffs, interest at the rate provided for in the bonds which were surrendered in exchange for the said City of Winter Haven General Refunding Bonds now held by the plaintiffs, less the amount of interest paid on said General Refunding Bonds now held by the plaintiffs.

4. That this Court will grant to the plaintiffs, as further relief, a preliminary injunction or temporary restraining order in this cause, temporarily restraining and enjoining the defendants, The City of Winter Haven, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, E. S. Horton, as Mayor-Commissioner of the said City of Winter Haven, John A. Snively, E. S. Horton, George Kennedy, K. T. Haynes, Sr., and E. R. Dantzler, as members of the City Commission of the said City of Winter Haven, W. W. Jamison, as City Manager of the said City of Winter Haven, and O. Roscoe Way, as City Auditor and Clerk of the said City of Winter Haven, and as ex officio Assessor of Taxes of the said City of Winter Haven, and as City Treasurer and Collector of the said City of Winter Haven, their officers, agents, servants, employees, and attorneys, from failing or refusing to pay the plaintiffs interest on the City of Winter Haven General Refunding Bonds of 1933, Series A and Series B, held by the plaintiffs, to the full extent and amount as provided for in said bonds and in the resolution of July 24, 1933 (Exhibit A) hereinbefore referred to providing for their issuance, notwithstanding any attempted call for redemption and for hereafter calling said bonds for redemption upon any basis of payment of principal and in-

terest except such as is provided for in said General Refunding Bonds and in said authorizing resolution of July 24, 1933 (Exhibit A), and mandatorily requiring them to pay the plaintiffs interest on the City of Winter Haven General Refunding Bonds of 1933; Series A and Series B, owned and held by the plaintiffs, to the full extent and amount as provided for in said bonds and in said authorizing resolution of July 24, 1933 (Exhibit A) notwithstanding any attempted call for redemption.

5. That, upon final hearing, the injunction or restraining order herein prayed be made permanent.

6. That, upon final hearing, the defendants and their officers, agents, servants, employees, and attorneys, be permanently restrained and enjoined in like manner and effect as hereinabove prayed.

7. That this Court will grant to the plaintiffs such other and further relief in the premises as to the Court shall seem meet and proper.

HULL, LANDIS & WHITEHAIR,

D. C. HULL,

Attorneys for Plaintiffs.

Address: Deland Florida.

State of Florida.

County of Volusia.

On this day personally appeared before me D. C. Hull to me well known, who, being by me first duly sworn, deposes and says that he is one of the attorneys for W. J. Meredith, James G. Martin and A. R. Ohmart, the Plaintiffs in this cause and that the facts set forth and alleged in the above and foregoing Complaint are true as he verily believes.

D. C. HULL.

Sworn to and subscribed before me this 5th day of
Sept., A. D. 1941.

(Seal) ELISE WATERS,
Notary Public, State of Florida.

My Commission Expires Dec. 16, 1942.

18

EXHIBIT A.

Minutes

Of a Special Meeting of the City Commission held on
June 24, 1933, at 7:00 O'Clock, P. M.

A special meeting of the City Commission of the City of Winter Haven, Florida, was held in the City of said City on July 24, 1933, at 7:00 o'clock P. M., there being present at said meeting Mayor-Commissioner O. P. Warren, Commissioner Jay Stull, Commissioner W. H. Schulz, Jr., City Manager A. N. Newman, City Attorney Henry L. Jollay, and City Auditor and Clerk John C. Terwilliger.

After the meeting was called to order, Mayor-Commissioner Warren announced that the purpose of the meeting was to consider the passage of a resolution providing for the issuance of Refunding Bonds of the City of Winter Haven to refund Two Million One Hundred Forty-Eight Thousand, Fifty-four and 78 100 Dollars (\$2,148,054.78) of bonds and interest of the City of Winter Haven. Said Refunding Bonds to be known and designated as "City of Winter Haven Refunding Bonds, Issue of 1933". One Million Nine Hundred Fifty-seven Thousand One Hundred Twenty-three and 58 100 Dollars (\$1,957,123.58) of said bonds to be designated as "Series A", and One Hundred Ninety Thousand, Nine Hundred Thirty-one and 20 100 Dollars (\$190,931.20) of said bonds to be designated as

"Series B". All of said bonds maturing serially April 1, 1948, to April 1, 1963 inclusive.

After a full consideration of the matter by the City Commission, Commissioner Schulz introduced and moved passage of the following resolution, to-wit:

Resolution providing for the issuance of \$2,148,054.78 of Negotiable Coupon Bonds of the City of Winter Haven, Florida, to be known as City of Winter Haven, Florida, General Refunding Bonds, Issue of 1933, for the purpose of refunding a like amount of legal and valid outstanding bonds and interest of said City; specifying the form of said bonds and providing for the manner of issuance and payment thereof; and declaring this resolution to be an emergency measure.

Whereas, the City Commission, being the governing authority of the City of Winter Haven, Florida, has heretofore authorized the issuance of and caused to be issued negotiable coupon bonds of said city under and pursuant to the Constitution and Statutes of the State of Florida; and

Whereas, of said bonds, there are now outstanding which constitute legal and valid unpaid indebtedness of said City of Winter Haven, the following:

Sewerage Bonds, dated May 1, 1922, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st of each year; in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
26 to 28	\$3,000.	May 1, 1933
29 and 30	2,000.	May 1, 1934
32	1,000.	May 1, 1935

Numbers	Amount	Maturity
35 to 37	3,000.	May 1, 1936
38	1,000.	May 1, 1937
41 to 43	3,000.	May 1, 1938
44 and 45	2,000.	May 1, 1939
47	1,000.	May 1, 1940
50 and 51	2,000.	May 1, 1941
53 and 54	2,000.	May 1, 1942
56 to 58	3,000.	May 1, 1943
59 to 61	3,000.	May 1, 1944
62 to 64	3,000.	May 1, 1945
65 to 67	3,000.	May 1, 1946
68 to 70	3,000.	May 1, 1947
71 to 73	3,000.	May 1, 1948
74 to 76	3,000.	May 1, 1949
77 to 79	3,000.	May 1, 1950
80 to 82	3,000.	May 1, 1951
83 to 85	3,000.	May 1, 1952

\$50,000.

\$50,000.00

Past due Coupons and Interest Aggregating

5,570.00

\$55,570.00

City Hall Bonds, dated May 1, 1922, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st of each year, in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
14	\$1,000.	May 1, 1931
17 and 18	2,000.	May 1, 1933
19 and 20	2,000.	May 1, 1934
21 and 22	2,000.	May 1, 1935
23 and 24	2,000.	May 1, 1936
25 and 26	2,000.	May 1, 1937

Numbers	Amount	Maturity	
27 and 28	2,000.	May 1, 1938	
29 and 30	2,000.	May 1, 1939	
31 and 32	2,000.	May 1, 1940	
33 and 34	2,000.	May 1, 1941	
35 and 36	2,000.	May 1, 1942	
37 and 38	2,000.	May 1, 1943	
39 and 40	2,000.	May 1, 1944	
41 and 42	2,000.	May 1, 1945	
43 and 44	2,000.	May 1, 1946	
45	1,000.	May 1, 1947	
	<u>\$30,000.</u>		\$30,000.00
Past due Coupons and Interest			<u>2,250.00</u>
Aggregating			\$32,250.00

White Way Bonds, dated May 1, 1922, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st of each year; in denomination of \$1,000 each; numbered and maturing as follows:

Numbers	Amount	Maturity	
4	\$1,000.	May 1, 1933	
5	1,000.	May 1, 1934	
6	1,000.	May 1, 1935	
7	1,000.	May 1, 1936	
8	1,000.	May 1, 1937	
9	1,000.	May 1, 1938	
10	1,000.	May 1, 1939	
	<u>\$7,000.</u>		\$7,000.00
Past due Coupont and Interest			<u>685.00</u>
Aggregating			\$7,685.00

Street Paving Bonds, dated May 1, 1922, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st of each year; in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amounts	Maturity
26	\$1,000.	May 1, 1931
36 to 39	4,000.	May 1, 1933
41 to 44	4,000.	May 1, 1934
46 to 50	5,000.	May 1, 1935
51 to 55	5,000.	May 1, 1936
60	1,000.	May 1, 1937
69 and 70	2,000.	May 1, 1939
71 to 75	5,000.	May 1, 1940
76 to 80	5,000.	May 1, 1941
81 to 85	5,000.	May 1, 1942
86 to 90	5,000.	May 1, 1943
91 to 95	5,000.	May 1, 1944
96 to 100	5,000.	May 1, 1945
101 to 105	5,000.	May 1, 1946
106 to 110	5,000.	May 1, 1947
111 to 115	5,000.	May 1, 1948
116 to 120	5,000.	May 1, 1949
121 to 125	5,000.	May 1, 1950
126 to 130	5,000.	May 1, 1951
131 to 135	5,000.	May 1, 1952

\$87,000

\$87,000.00

Past due Coupons and Interest 9,375.00

Aggregating \$96,375.00

Improvement Bonds, dated March 1, 1923, bearing interest at the rate of 6% per annum, payable semi-annually March 1st and September 1st of each year; numbered, in denomination and maturing as follows:

Numbers	Amount	Amount Due	Maturity
24	\$1,000.00	\$1,000.00	March 1, 1932
26 to 28	1,000.00		
29	775.09	3,775.09	March 1, 1933
		<u>4,775.09</u>	
Past due Coupons and Interest			\$4,775.09
			<u>288.25</u>
Aggregating			\$5,063.34

Improvement Bonds, dated April 1, 1923, bearing interest at the rate of 6% per annum, payable semi-annually April 1st and October 1st of each year; numbered, in denomination and maturing as follows:

Numbers	Amount	Amount Due	Maturity
41 and 42	\$1,000.00	\$2,000.00	April 1, 1932
43	1,000.00		
44	239.54	1,239.54	April 1, 1933
		<u>\$3,239.54</u>	
Past due Coupons and Interest			\$3,239.54
			<u>157.19</u>
Aggregating			\$3,396.73

Improvement Bonds, dated June 1, 1923, bearing interest at the rate of 6% per annum, payable semi-annually

June 1st, and December 1st of each year; numbered, in denomination and maturing as follows:

Numbers	Amount	Amount Due	Maturity
55 and 56	\$1,000.00	\$2,000.00	June 1, 1931
65, 66, and 67	1,000.00	3,000.00	June 1, 1932
57 and 58	1,000.00		
68	404.38	2,404.38	June 1, 1933
		<hr/>	
		\$7,404.38	\$7,404.38
Past due Coupons and Interest			448.09
Aggregating			<hr/>
			\$7,852.47

Improvement Bonds, dated August 1, 1925, bearing interest at the rate of 6% per annum, payable semi-annually February 1st and August 1st of each year; numbered, in denomination and maturing as follows:

Numbers	Amount	Amount Due	Maturity
83 and 84	\$1,000.00	\$2,000.00	August 1, 1931
85, 86 and 87	1,000.00	3,000.00	August 1, 1932
88 and 89	1,000.00		
90	247.36	2,247.36	August 1, 1933
		<hr/>	
		\$7,247.36	\$7,247.36
Past due Coupons and interest			522.47
Aggregating			<hr/>
			\$7,769.83

Paving Bonds, Series "A", dated November 10, 1925, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st of each year; in

denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
166 to 170	\$5,000.00	November 10, 1931
199, 204, to 209, 218 to 223	13,000.00	November 10, 1932
232 to 244, 251 to 253, 256 to 264	25,000.00	November 10, 1933
265 to 274, 276 to 297	32,000.00	November 10, 1934
298 to 300, 305 to 320, 322 to 330	28,000.00	November 10, 1935
	<hr/> \$103,000.00	\$103,000.00
Past due Coupons and Interest		10,562.99
Aggregating		<hr/> \$113,562.99

Paving Bonds, Series "B", dated May 1, 1926, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st of each year in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
403 to 407, 431 to 435	\$10,000	May 1, 1931
451 to 469, 471, 486, 487		
506 to 510, 512 to 514		
521 to 526, 536 to 540	41,000	May 1, 1932
544, 545, 556 to 605, 607 to 630	76,000	May 1, 1933
632 to 670, 680 to 695		
698 to 720	72,000	May 1, 1934
728, 730 to 775, 791 to 807, 809	65,000	May 1, 1935

813 to 815, 821 to 835,

839, 840, 842, 843, 844,

846 to 859, 864 to 900 74,000. May 1, 1936

	338,000.	\$338,000.00
Past due coupons and interest		34,780.00
Aggregating		\$372,780.00

Paving Bonds, Series "C", dated October 1, 1926, bearing interest at the rate of 6% per annum, payable semi-annually April 1st and October 1st of each year, in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
167 to 181, 187 to 191	\$20,000.	October 1, 1931
207 and 208	2,000.	October 1, 1932
235 to 246, 248 to 273	38,000.	October 1, 1933
274 to 292, 294 to 298		
303 to 312	34,000.	October 1, 1934
319 to 351	33,000.	October 1, 1935
352 to 372, 374 to 390	38,000.	October 1, 1936
	\$165,000.	\$165,000.00
Past due Coupons and Interest		18,990.00
Aggregating		\$183,990.00

Paving Bonds, Series "D", dated February 1, 1927, bearing interest at the rate of 6% per annum, payable semi-annually February 1st and August 1st of each year, in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
23 to 27	\$5,000.	February 1, 1933
28 to 31	4,000.	February 1, 1934
32 to 36	5,000.	February 1, 1935
37 to 40	4,000.	February 1, 1936
41 to 45	5,000.	February 1, 1937
	<hr/>	
	\$23,000.	\$23,000.00
Past due Coupons and Interest		1,040.00
		<hr/>
Aggregating		\$24,040.00

Capital Fund Improvement Bonds, dated June 1, 1927, bearing interest at the rate of 6% per annum, payable semi-annually June 1st and December 1st of each year; in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
37 to 41	\$5,000.	June 1, 1930
132 to 139, 156 to 160	13,000.	June 1, 1932
171 to 180, 186 to 226	51,000.	June 1, 1933
227 to 271, 273 to 276,		
282	50,000.	June 1, 1934
283 to 296, 298 to 323,		
329 to 338	50,000.	June 1, 1935
344 to 394	51,000.	June 1, 1936
395 to 403, 405 to 419,		
422 to 450	53,000.	June 1, 1937
	<hr/>	
	\$273,000.	\$273,000.00
Past due Coupons and Interest		25,650.00
		<hr/>
Aggregating		\$298,650.00

Refunding Paving Bonds, Series "B", dated May 1, 1927, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st; of each year; in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
1 to 55	\$55,000.	
61 to 67	7,000.	
71 to 85	15,000.	May 1, 1937
	<u>\$77,000.</u>	
Past due Coupons and Interest		\$77,000.00
		<u>8,945.00</u>
Aggregating		\$85,945.00

Refunding Bonds, Series "D", dated April 15, 1929, bearing interest at the rate of 6% per annum, payable semi-annually April and October 15th of each year, in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
1 to 3	\$3,000.	April 15, 1932
4 to 6	3,000.	April 15, 1933
7 to 9	3,000.	April 15, 1934
10 to 12	3,000.	April 15, 1935
13 to 20	8,000.	April 15, 1936
21 to 30	10,000.	April 15, 1937
31 to 36, 38 and 40	8,000.	April 15, 1938
41 to 50	10,000.	April 15, 1939
51 to 60	10,000.	April 15, 1940
61 to 69	9,000.	April 15, 1941
71 to 80	10,000.	April 15, 1942
81 to 90	10,000.	April 15, 1943
	<u>\$87,000.</u>	
Past due coupons and interest		\$87,000.00
		<u>9,712.50</u>
Aggregating		\$96,712.50

Refunding bonds, Series "E," dated September 15, 1929, bearing interest at the rate of 6% per annum, payable semi-annually March 15, and September 15th of each year; in denomination of \$1,000. each, numbered and maturing as follows:

Numbers	Amount	Maturity
1	\$1,000.	September 15, 1932
4, 5 and 6	3,000.	September 15, 1933
7 to 9	3,000.	September 15, 1934
10 to 12	3,000.	September 15, 1935
13 to 15	3,000.	September 15, 1936
16 to 18	3,000.	September 15, 1937
19 and 21	2,000.	September 15, 1938
22 to 24	3,000.	September 15, 1939
25 to 27	3,000.	September 15, 1940
29 and 30	2,000.	September 15, 1941
31 to 33	3,000.	September 15, 1942
38 and 39	2,000.	September 15, 1944
40 to 42	3,000.	September 15, 1945
43	1,000.	September 15, 1946
52	1,000.	September 15, 1949
55 to 57	3,000.	September 15, 1950
58 to 60	3,000.	September 15, 1951
61 to 64	4,000.	September 15, 1952
65	1,000.	September 15, 1953
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	\$47,000	\$47,000.00
Past due Coupons and Interest		5,757.50
Aggregating		<hr/>
		\$52,757.50

Refunding Bonds, Series "F", dated April 15, 1930, bearing interest at the rate of 6% per annum, payable semi-annually April and October 15th of each year; in denomination of \$1,000. each, numbered and maturing as follows:

Numbers	Amount	Maturity
1 to 5	\$5,000	April 15, 1933
6 to 9	4,000	April 15, 1934
11, 12 and 14	3,000	April 15, 1935
16 to 19	4,000	April 15, 1936
21, 22 and 24	3,000	April 15, 1937
26, 27, 29, and 31	4,000	April 15, 1938
32 to 37	6,000	April 15, 1939
38 to 43	6,000	April 15, 1940
44 to 49	6,000	April 15, 1941
50 to 55	6,000	April 15, 1942
56 to 62	7,000	April 15, 1943
63 to 69	7,000	April 15, 1944
70 to 76	7,000	April 15, 1945
77 to 83	7,000	April 15, 1946
84 to 90	7,000	April 15, 1947
91 to 98	8,000	April 15, 1948
99 to 106	8,000	April 15, 1949
107 to 114	8,000	April 15, 1950
115 to 122	8,000	April 15, 1951
123 to 127	5,000	April 15, 1952
131 to 134	4,000	April 15, 1953
140 to 143	4,000	April 15, 1954

 \$127,000

\$127,000.00

Fast due coupons and interest	13,845 00
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Aggregating	\$140,845.00
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Refunding Bonds, Series "G", dated September 15, 1930, bearing interest at the rate of 6% per annum, payable semi-annually March 15th and September 15th of each year, in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
1 to 3	\$3,000	September 15, 1933
4 to 6	3,000	September 15, 1934

Numbers	Amount	Maturity
7 to 9	3,000.	September 15, 1935
10 to 12	3,000.	September 15, 1936
13 to 15	3,000.	September 15, 1937
16 to 18	3,000.	September 15, 1938
19 to 21	3,000.	September 15, 1939
22 to 24	3,000.	September 15, 1940
25 to 27	3,000.	September 15, 1941
28 to 30	3,000.	September 15, 1942
31 to 33	3,000.	September 15, 1943
34 to 36	3,000.	September 15, 1944
37 to 39	3,000.	September 15, 1945
40 to 42	3,000.	September 15, 1946
43 to 45	3,000.	September 15, 1947
46 to 48	3,000.	September 15, 1948
49 to 51	3,000.	September 15, 1949
52 and 53	2,000.	September 15, 1950
55 to 57	3,000.	September 15, 1951
58 to 60	3,000.	September 15, 1952
62 to 64	3,000.	September 15, 1953
65 to 67	3,000.	September 15, 1954
	<hr/>	
	\$65,000.	\$65,000.00
Past due Coupons and Interest		7,722.50
		<hr/>
Aggregating		\$72,722.50

Refunding Bonds, Series "H", dated April 15, 1931, bearing interest at the rate of 6% per annum, payable semi-annually April 15, and October 15th of each year; in denomination of \$1,000. each, numbered and maturing as follows:

Numbers	Amount	Maturity
1, 3 to 5	\$4,000.	April 15, 1934
6, 8 to 10	4,000.	April 15, 1935

Numbers	Amount	Maturity
11, 13 to 15	4,000.	April 15, 1936
16, 18 to 20	4,000.	April 15, 1937
21 to 25	5,000.	April 15, 1938
26 to 31	6,000.	April 15, 1939
33 to 37	5,000.	April 15, 1940
38 to 43	6,000.	April 15, 1941
44 to 49	6,000.	April 15, 1942
50 to 55	6,000.	April 15, 1943
56 to 62	7,000.	April 15, 1944
63 to 69	7,000.	April 15, 1945
70 to 74	5,000.	April 15, 1946
77 to 81	5,000.	April 15, 1947
84 to 88	5,000.	April 15, 1948
91 to 95	5,000.	April 15, 1949
99, 100, 102, 103	4,000.	April 15, 1950
109, 111	2,000.	April 15, 1951
117, 119	2,000.	April 15, 1952
123, 124, and 127	3,000.	April 15, 1953
132	1,000.	April 15, 1954
141	1,000.	April 15, 1955

 \$97,000.

\$97,000.00

Past due Coupons and Interest

10,647.50

 Aggregating

 \$107,647.50

Refunding Bonds, Series "I-2", dated May 1, 1931, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st of each year; in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
17 to 19	\$3,000.	May 1, 1938
20 to 22	3,000.	May 1, 1939
23 to 25	3,000.	May 1, 1940

Numbers	Amount	Maturity
26 to 28	3,000.	May 1, 1941
29 to 31	3,000.	May 1, 1942
32 to 34	3,000.	May 1, 1943
35 to 37	3,000.	May 1, 1944
38 to 40	3,000.	May 1, 1945
41 to 45	5,000.	May 1, 1946
46 to 50	5,000.	May 1, 1947
51 to 55	5,000.	May 1, 1948
56 to 60	5,000.	May 1, 1949
61 to 64	4,000.	May 1, 1950
106 to 110	5,000.	May 1, 1959
112 to 115	4,000.	May 1, 1960
116	1,000.	May 1, 1961
122 to 124	3,000.	May 1, 1962

\$61,000.

\$61,000.00

Past due Coupons and Interest

1,550.00

Aggregating

\$62,550.00

Refunding Bonds, Series "I-3", dated June 1, 1931, bearing interest at the rate of 6% per annum, payable semi-annually June 1st and December 1st of each year; in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
125 and 126	\$2,000.	June 1, 1938
127 and 128	2,000.	June 1, 1939
129 and 130	2,000.	June 1, 1940
131	1,000.	June 1, 1941
141 and 142	2,000.	June 1, 1946
143 and 144	2,000.	June 1, 1947
145 and 146	2,000.	June 1, 1948
147 and 148	2,000.	June 1, 1949

Numbers	Amount	Maturity
149 and 150	2,000.	June 1, 1950
151 and 152	2,000.	June 1, 1951
153 and 154	2,000.	June 1, 1952
168	1,000.	June 1, 1959
169 and 170	2,000.	June 1, 1960
171 and 172	2,000.	June 1, 1961
173 to 175	3,000.	June 1, 1962

\$29,000.

\$29,000.00

Past due Coupons and Interest	1,450.00
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Aggregating	\$30,450.00
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Refunding Bonds, Series "I-5", dated October 1, 1931, bearing interest at the rate of 6% per annum, payable semi-annually April 1st and October 1st of each year; in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
181 to 183	\$3,000.	October 1, 1938
184 to 186	3,000.	October 1, 1939
187 to 189	3,000.	October 1, 1940
190 to 192	3,000.	October 1, 1941
193 to 195	3,000.	October 1, 1942
196 to 198	3,000.	October 1, 1943
199 to 201	3,000.	October 1, 1944
202 to 204	3,000.	October 1, 1945
205 to 207	3,000.	October 1, 1946
208 to 210	3,000.	October 1, 1947
211 to 213	3,000.	October 1, 1948
214 to 216	3,000.	October 1, 1949
217 to 219	3,000.	October 1, 1950
220 to 222	3,000.	October 1, 1951
223 to 225	3,000.	October 1, 1952
226 to 228	3,000.	October 1, 1953

Numbers	Amount	Maturity
229 to 231	3,000.	October 1, 1954
232 to 234	3,000.	October 1, 1955
235	1,000.	October 1, 1956
252	1,000.	October 1, 1961

	<u>\$58,000.</u>	<u>\$56,000.00</u>
Past due Coupons and Interest		2,040.00

Aggregating		<u>\$58,040.00</u>
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Refunding Bonds, Series "I-6", dated November 10, 1931, bearing interest at the rate of 6% per annum, payable semi-annually May 10 and November 10th of each year; in denomination of \$1,000. each, numbered and maturing as follows:

Numbers	Amount	Maturity
259 to 261	\$3,000.	November 10, 1938
262 to 264	3,000.	November 10, 1939
265 to 267	3,000.	November 10, 1940
268 to 270	3,000.	November 10, 1941
271 to 272	2,000.	November 10, 1942
273 and 274	2,000.	November 10, 1943
275 and 276	2,000.	November 10, 1944
277	1,000.	November 10, 1945
279 and 280	2,000.	November 10, 1946
281 and 282	2,000.	November 10, 1947
283 and 284	2,000.	November 10, 1948
285 and 286	2,000.	November 10, 1949
287	1,000.	November 10, 1950
289 and 290	2,000.	November 10, 1951
291 and 292	2,000.	November 10, 1952

	<u>\$32,000.</u>	<u>\$32,000.00</u>
Past due Coupons and Interest		1,226.56

Aggregating		<u>\$33,226.56</u>
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Refunding Bonds, Series "I-7", dated February 1, 1932, bearing interest at the rate of 6% per cent per annum, payable semi-annually February 1st and August 1st of each year; in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
313	\$1,000.	February 1, 1938.
314	1,000.	February 1, 1939
315	1,000.	February 1, 1940
316	1,000.	February 1, 1941
	<u>\$4,000.</u>	
Past due Coupons and Interest		\$4,000.00
		<u>160.00</u>
Aggregating		\$4,160.00

Refunding Bonds, Series "I-8", dated March 1, 1932, bearing interest at the rate of 6% per annum, payable semi-annually March and September 1st of each year; in denomination of \$1,000. each, numbered and maturing as follows:

Numbers	Amount	Maturity
317	\$1,000.	March 1, 1942
	<u>\$1,000.</u>	
Past due Coupons and Interest		\$1,000.00
		<u>35.00</u>
Aggregating		\$1,035.00

Refunding Bonds, Series "I-9", dated April 15, 1932, bearing interest at the rate of 6% per annum, payable semi-annually April and October 15th of each year; in de-

nomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity	
321	\$1,000.	April 15, 1946	
322	1,000.	April 15, 1947	
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	\$2,000.		\$2,000.00
Past due coupons and Interest			46.66
			<hr/>
			\$2,046.66

making a total outstanding indebtedness as above described of \$1,957,123.58; and

Whereas, there are now outstanding which constitute legal and valid unpaid indebtedness of said City the following:

Funding Bonds, dated July 15, 1925, bearing interest at the rate of 5½% per annum, payable semi-annually April 1st and October 1st of each year; in denomination of \$1,000. each, numbering and maturing as follows:

Numbers	Amount	Maturity	
37 and 38	\$2,000.	April 1, 1932	
43 to 48	6,000.	April 1, 1933	
49 to 52	4,000.	April 1, 1934	
55 and 56	2,000.	April 1, 1935	
61 to 63	3,000.	April 1, 1936	
67 to 69 and 72	4,000.	April 1, 1937	
73 to 78	6,000.	April 1, 1938	
79 to 84	6,000.	April 1, 1939	
85 to 90	6,000.	April 1, 1940	
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	\$39,000.		\$39,000.00
Past due Coupons and Interest			3,052.50
			<hr/>
Aggregating			\$42,052.50

Refunding Bonds, Series "B", dated April 15, 1928, bearing interest at the rate of $5\frac{1}{2}\%$ per annum, payable semi-annually April 15th and October 15th of each year; in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
1 to 3	\$3,000.	April 15, 1931
10 to 12	3,000.	April 15, 1934
13 to 15	3,000.	April 15, 1935
16 to 18	3,000.	April 15, 1936
19 to 21	3,000.	April 15, 1937
22 to 25	4,000.	April 15, 1938
26 to 29	4,000.	April 15, 1939
30 to 33	4,000.	April 15, 1940
34 to 37	4,000.	April 15, 1941
38 to 41	4,000.	April 15, 1942
42 to 45	4,000.	April 15, 1943
46 to 49	4,000.	April 15, 1944
50 to 53	4,000.	April 15, 1945
54 to 57	4,000.	April 15, 1946
58 to 62	5,000.	April 15, 1947
68 to 72	5,000.	April 15, 1949
73 to 77	5,000.	April 15, 1950
78 to 82	5,000.	April 15, 1951
83 to 87	5,000.	April 15, 1952
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	\$76,000.	\$76,000.00
Past due Coupons and Interest		8,187.50
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Aggregating		\$84,187.50

Refunding Bonds, Series "C", dated September 15, 1928, bearing interest at the rate of $5\frac{1}{2}\%$ per annum, payable semi-annually March 15th and September 15th of each

year; in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
1	\$1,000.	September 15, 1931
5 and 6	2,000.	September 15, 1932
7 and 8	2,000.	September 15, 1933
10 and 11	2,000.	September 15, 1934
15	1,000.	September 15, 1935
16 to 18	3,000.	September 15, 1936
20 and 21	2,000.	September 15, 1937
22 and 23	2,000.	September 15, 1938
27	1,000.	September 15, 1939
28	1,000.	September 15, 1940
32 and 33	2,000.	September 15, 1941
34 and 35	2,000.	September 15, 1942
38 and 39	2,000.	September 15, 1943
40 and 41	2,000.	September 15, 1944
45	1,000.	September 15, 1945
46 to 48	3,000.	September 15, 1946
49 to 51	3,000.	September 15, 1947
52 to 54	3,000.	September 15, 1948
55 to 57	3,000.	September 15, 1949
58 to 60	3,000.	September 15, 1950
61 to 64	4,000.	September 15, 1951
66, 68 and 69	3,000.	September 15, 1952
70 to 74	5,000.	September 15, 1953
	<hr/>	
	\$53,000.	\$53,000.00
Past due Coupons and Interest		5,511.90
		<hr/>
Aggregating		\$58,511.90

Refunding Bonds, Series "I-1", dated April 15, 1931, bearing interest at the rate of 5½% per annum, payable semi-annually April 15th and October 15th of each year.

in denomination of \$1,000 each, numbered and maturing as follows:

Numbers	Amount	Maturity
1 and 2	\$2,000.	April 15, 1938
3 and 4	2,000.	April 15, 1939
15 and 16	2,000.	April 15, 1945
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	\$6,000.	\$6,000.00
Past due Coupons and Interest		179.30
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		\$6,179.30

making a total outstanding indebtedness as above described of \$190,931.20; and

Whereas, the financial condition of said City of Winter Haven, Florida, and its ability to pay its indebtedness makes it necessary for the best interest of said City to refund said outstanding indebtedness in the aggregate amounts of One Million Nine Hundred Fifty-seven Thousand One Hundred Twenty-three and 58 100 Dollars (\$1,957,123.58) and One Hundred Ninety Thousand Nine Hundred Thirty One and 20 100 Dollars (\$190,931.20) respectively, the holders of said indebtedness being willing to surrender the same for a like amount of Refunding Bonds; and

Whereas, all acts, conditions, and things required by the Constitution and laws of the State of Florida, including Chapter 15772, Laws of Florida, Acts of 1931, being the General Refunding Act of 1931 and the Charter of the City of Winter Haven, Florida, to exist, happen or be performed precedent to the issuance of said Refunding Bonds of the City of Winter Haven, Florida, in the amounts of One Million Nine Hundred Fifty-seven Thou-

sand One Hundred Twenty-three and 58 100 Dollars (\$1,957,123.58) and One Hundred Ninety Thousand Nine Hundred Thirty-one and 20 100 Dollars (\$190,931.20) respectively, for such purpose, have happened and been performed in regular and due form, time and manner, and

Whereas, under date of May 16, 1933, the City Commission of the City of Winter Haven ratified and confirmed an agreement pursuant to which there has been created the Winter Haven, Florida, Refunding Agency, which is to work in cooperation with this City Commission in the refinancing of the indebtedness of said City and which agreement contemplates the refinancing of the indebtedness of said City of Winter Haven, Florida, as hereinafter provided:

Now, Therefore, Be It Resolved By the City Commission, being the governing authority of the City of Winter Haven, Florida:

Section 1. That for the purpose of refunding and retiring One Million Nine Hundred Fifty-seven Thousand One Hundred Twenty-three and 58 100 Dollars (\$1,957,123.58) of the following described legal outstanding indebtedness of the City of Winter Haven, Florida:

Sewerage Bonds, dated May 1, 1922, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st of each year; in denomination of \$1,000 each, numbers 26 to 30, 32, 35 to 38, 41, to 45, 47, 50, 51, 53, 54, 56 to 85, due serially May 1, 1933 to 1952, inclusive	\$ 50,000.00
Past due Coupons and interest	5,570.00

City Hall Bonds, dated May 1, 1922, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st of each year; in denomination of \$1,000 each, numbered from 14, 17 to 45 inclusive; due serially May 1, 1931 to 1947, inclusive \$ 30,000.00
 Past due Coupons and interest 2,250.00

White Way Bonds, dated May 1, 1922, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st of each year; in denomination of \$1,000 each, numbers 4 to 10, inclusive; due serially May 1, 1933 to May 1, 1939 \$ 7,000.00
 Past due Coupons and interest 685.00

Street-Paving Bonds, dated May 1, 1922, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st of each year; in denomination of \$1,000 each, numbers 26, 36 to 39, 41 to 44, 46 to 55, to, 69, 70, to 135, inclusive; due serially May 1, 1931 to 1952 \$ 87,000.00
 Past due Coupons and interest 9,375.00

Improvement Bonds, dated March 1, 1923, bearing interest at the rate of 6% per annum, payable semi-annually March 1st and September 1st of each year; in denomination of \$1,000 and \$288.25 each, numbers 24, 26 to 29 inclusive; due serially March 1, 1932 to 1933 \$ 4,775.09
 Past due Coupons and interest 288.25

Improvement Bonds, dated April 1, 1923, bearing interest at the rate of 6% per annum, payable semi-annually April 1st and Octo-

ber 1st of each year; in denomination of \$1,000 and \$239.54 each, numbers 41 to 44 inclusive; due serially April 1, 1932 to 1933 \$ 3,239.54
 Past due Coupons and interest 157.19

Improvement Bonds, dated June 1, 1923, bearing interest at the rate of 6% per annum, payable semi-annually June 1st and December 1st of each year; in denomination of \$1,000 and \$404.38 each, numbers 55 to 58, 65 to 68, due serially June 1, 1931 to 1933 inclusive \$ 7,404.38
 Past due Coupons and interest 448.09

Improvement Bonds, dated August 1, 1923, bearing interest at the rate of 6% per annum, payable semi-annually February 1st and August 1st of each year; in denomination of \$1,000 and \$247.36 each, numbers 83 to 90, due serially August 1st, 1931 to 1933 inclusive \$ 7,247.36
 Past due Coupons and interest 522.47

Paving Bonds, Series "A", dated November 10, 1925, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st of each year; in denomination of \$1,000 each, numbers 166 to 170, 199 204 to 209, 218 to 223, 232 to 244, 251 to 253, 256 to 274, 276 to 297, 298 to 300, 305 to 320, 322 to 330, due serially November 10, 1931 to 1935 inclusive \$102,000.00
 Past due Coupons and interest 10,562.99

Paving Bonds Series "B", dated May 1, 1926, bearing interest at the rate of 6% per annum, payable semi-annually May 1st

and November 1st of each year, in denomination of \$1,000 each, numbers 403 to 407, 431 to 435, 451 to 469, 471, 486, 487, 506 to 510-512 to 514, 521 to 526, 536 to 540, 544, 545, 556 to 605, 607 to 630, 632 to 670, 686 to 696, 698 to 720, 728, 730 to 775, 791 to 807, 809, 813 to 815, 821 to 835, 839, 840, 842 to 844, 846 to 859, 864 to 900, due serially, May 1, 1931 to 1936 inclusive \$338,000.00

Past due Coupons and interest 34,780.00

Paving Bonds, Series "C", dated October 1, 1926, bearing interest at the rate of 6% per annum payable semi-annually April 1st and October 1st of each year; in denomination of \$1,000 each, numbers 167 to 181, 187 to 191, 207 to 208, 235 to 246, 249 to 273, 274 to 292, 294 to 298, 303 to 312, 319 to 351, 352 to 372, 374 to 390, due serially October 1, 1931 to 1936 inclusive \$165,000.00

Past due Coupons and interest 18,990.00

Paving Bonds, Series "D", dated February 1, 1927, bearing interest at the rate of 6% per annum, payable semi-annually February 1st and August 1st of each year; in denomination of \$1,000 each, numbers 25 to 45, due serially February 1, 1933 to 1937 inclusive \$ 23,000.00

Past due Coupons and interest 1,040.00

Capital Fund Improvement Bonds, dated June 1, 1927, bearing interest at the rate of 6% per annum, payable semi-annually June 1st and December 1st of each year; in denomination of \$1,000 each, numbers 35 to 41, 132 to 139, 156 to 160, 471 to 480, 186 to

-271, 275 to 276, 282 to 296, 298 to 325, 329
to 338, 344 to 403, 405 to 419, 422 to 450,
due serially June 1, 1930 to 1937 inclusive \$273,000.00
Past due Coupons and interest 25,650.00

Refunding Bonds, Series "B", dated May 1,
1927, bearing interest at the rate of 6% per
annum; payable semi-annually May 1st and
November 1st, of each year; in denomina-
tion of \$1,000 each, numbers 1 to 55, 61 to
67, 71 to 85, due May 1, 1937 \$ 77,000.00
Past due Coupons and interest 8,945.00

Refunding Bonds, Series "D", dated April 15,
1929, bearing interest at the rate of 6% per
annum, payable semi-annually April and
October 15, of each year; in denomination
of \$1,000 each, numbers 1 to 36, 38, 40, to
69, 71 to 90, due serially April 15, 1932 to
1943, inclusive \$ 87,000.00
Past due Coupons and interest 9,712.50

Refunding Bonds, Series "E", dated Septem-
ber 15, 1929, bearing interest at the rate of
6% per annum, payable semi-annually
March 15 and September 15th of each
year, in denomination of \$1,000 each, num-
bers 1, 4 to 19, 21 to 27, 29 to 33, 38 to 43,
52, 55 to 65, due serially September 15,
1932 to 1953 inclusive \$ 47,000.00
Past due Coupons and interest 5,757.50

Refunding Bonds, Series "F", dated April 15,
1930, bearing interest at the rate of 6% per
annum, payable semi-annually April and
October 15th of each year; in denomination
of \$1,000 each, numbers 1 to 9, 11, 12, 14,

16 to 19, 21, 22, 24, 26, 27, 29, 31 to 127, 131 to 134, 140 to 143, due serially April 15, 1933 to 1954 inclusive	\$127,000.00
Past due Coupons and interest	13,845.00

Refunding Bonds, Series "G", dated September 1930, bearing interest at the rate of 6% per annum, payable semi-annually March 15 and September 15 of each year; in denomination of \$1,000 each, numbers 1 to 53, 55 to 60, 62 to 67, due serially September 15, 1933 to 1954 inclusive

	\$ 65,000.00
Past due Coupons and Interest	7,722.50

Refunding Bonds, Series "H", dated April 15, 1931, bearing interest at the rate of 6% per annum, payable semi-annually April 15 and October 15 of each year; in denomination of \$1,000 each, numbers 1, 3 to 6, 8 to 11, 13 to 16, 18 to 31, 33 to 74, 77 to 81, 84 to 88, 91 to 95, 99, 100, 102, 103, 109, 111, 117, 119, 123, 124, 127, 132, 141, due serially April 15, 1934 to 1955 inclusive

	\$ 97,000.00
Past due Coupons and Interest	10,647.50

Refunding Bonds, Series "I-2", dated May 1, 1931, bearing interest at the rate of 6% per annum, payable semi-annually May 1st and November 1st of each year; in denomination of \$1,000 each, numbers 17 to 64, 106 to 110, 112 to 116, 122 to 124, due serially May 1, 1933 to 1962 inclusive

	\$ 61,000.00
Past due Coupons and Interest	1,550.00

Refunding Bonds, Series "I-3", dated June 1, 1931, bearing interest at the rate of 6% per annum, payable semi-annually June 1st

and December 1st of each year; in denomination of \$1,000 each, numbers 125 to 131, 141 to 154, 168 to 175, due serially June 1, 1938 to 1962 inclusive \$ 29,000.00
 Past due Coupons and Interest 1,450.00

Refunding Bonds Series "I-5", dated October 1, 1931, bearing interest at the rate of 6% per annum, payable semi-annually, April 1st and October 1st of each year; in denomination of \$1,000 each, numbers 181 to 235, 252, due serially October 1, 1938 to 1961 inclusive \$ 56,000.00
 Past due Coupons and Interest 2,040.00

Refunding Bonds, Series "I-6", dated November 10, 1931, bearing interest at the rate of 6% per annum, payable semi-annually, May 10, and November 10 of each year; in denomination of \$1,000 each, numbers 259 to 277, 279 to 287, 289 to 292, due serially November 10, 1938 to 1952 inclusive \$ 32,000.00
 Past due Coupons and Interest 1,226.56

Refunding Bonds, Series "I-7", dated February 1, 1932, bearing interest at the rate of 6% per annum, payable semi-annually February 1st and August 1st of each year; in denomination of \$1,000 each, numbers 313 to 316, due serially February 1, 1938 to 1941 inclusive \$ 4,000.00
 Past due Coupons and Interest 160.00

Refunding Bonds, Series "I-8", dated March 1, 1932, bearing interest at the rate of 6% per annum, payable semi-annually March and September 1st of each year; in denom-

ination of \$1,000 each, number 317, due	
March 1, 1942	\$ 1,000.00
Past due Coupons and Interest	35.00

Refunding Bonds, Series "I-9", dated April 15,	
1932, bearing interest at the rate of 6% per	
annum, payable semi-annually April and	
October 15 of each year; in denomination	
of \$1,000 each, numbers 321, 322 due serial-	
ly April 15, 1946 to 1947	\$ 2,000.00
Past due Coupons and Interest	46.66

there are hereby authorized to be issued the negotiable coupon bonds of the said City of Winter Haven, Florida, in the aggregate amount of One Million Nine Hundred Fifty-seven Thousand One Hundred Twenty-three and 58 100 Dollars (\$1,957,123.58) to be designated General Refunding Bonds, Issue of 1933, Series "A", the amount of which does not exceed the above described outstanding indebtedness.

Section 2. That said Refunding Bonds shall be dated April 1, 1933, and shall bear interest from date thereof until paid, or until called for redemption, payable semi-annually on the first days of April and October of each year, which interest, except as hereinafter otherwise provided, shall be enforceable and collectible at the rate of Three and one-half per cent (3½%) per annum from the date of the bonds to April 1, 1935; at the rate of Four per cent (4%) per annum from and including April 1, 1935 to April 1, 1936; at the rate of Four and one-half per cent (4½%) per annum from and including April 1, 1936 to April 1, 1937; at the rate of Five per cent (5%) per annum from and including April 1, 1937 to April 1, 1943 and at the rate of Six per cent (6%) per annum from and including April 1, 1943 and thereafter; and at said rates shall be evidenced by coupons attached to each bond. If

any of said bonds shall not have been called and retired as hereinafter provided prior to maturity, full interest at the rate of Six per cent. (6%) per annum less the amount theretofore paid in accordance with such interest coupons, shall also on such maturity date be enforceable, collectible and paid upon presentation of said bonds as hereinafter provided, which said deferred interest shall be represented by a non-interest bearing, non-detachable certificate or coupon attached to each of said bonds. Each of said bonds shall be signed by the Mayor-Commissioner and attested by the City Auditor and Clerk of the City of Winter Haven and the corporate seal of said City shall be affixed to each of said bonds. Interest coupons (including the deferred interest coupon) attached to each of said bonds shall be executed with the fac simile signatures of the said Mayor-Commissioner and City Auditor and Clerk, and said officials by the execution of said bonds shall adopt as and for their own proper signatures, their fac-simile signatures on each of said coupons.

Section 3. That said General Refunding Bonds, Issue of 1933, Series "A", and the interest thereon shall be payable in lawful money of the United States of America at the Central Hanover Bank and Trust Company in the City of New York, New York.

Section 4. That said bonds shall be numbered, be in denomination and subject to the right of prior redemption as hereinafter provided, and shall mature as follows:

Numbers	Denomination	Amount	Maturity
1	\$ 123.58	123.58	
2 to 281	100.00	28,000.00	
282 to 720	1,000.00	439,000.00	April 1, 1948
721 to 935	1,000.00	215,000.00	April 1, 1949
936 to 1146	1,000.00	211,000.00	April 1, 1950
1147 to 1369	1,000.00	223,000.00	April 1, 1951

Numbers	Denomination	Amount	Maturity
1370 to 1570	1,000.00	201,000.00	April 1, 1952
1571 to 1610	1,000.00	40,000.00	April 1, 1953
1611 to 1657	1,000.00	47,000.00	April 1, 1954
1658 to 1704	1,000.00	47,000.00	April 1, 1955
1705 to 1750	1,000.00	46,000.00	April 1, 1956
1751 to 1796	1,000.00	46,000.00	April 1, 1957
1797 to 1840	1,000.00	44,000.00	April 1, 1958
1841 to 1877	1,000.00	37,000.00	April 1, 1959
1878 to 1914	1,000.00	37,000.00	April 1, 1960
1915 to 1953	1,000.00	39,000.00	April 1, 1961
1954 to 1990	1,000.00	37,000.00	April 1, 1962
1991 to 2210	1,000.00	220,000.00	April 1, 1963

Section 5. That said General Refunding Bonds Issue of 1933, Series "A", and the coupons thereto attached and the validation certificate to be indorsed thereon shall be in substantially the following form:

United States of America,

State of Florida,

County of Polk,

No. City of Winter Haven, \$...

General Refunding Bond Issue of 1933,

Series "A".

Know All Men By These Presents: That the City of Winter Haven in the County of Polk, State of Florida, hereby acknowledges itself to be indebted and promises to pay to bearer the sum of Dollars on the first day of April 19... with the option of prior redemption as hereinafter provided, and to pay interest on said sum as hereinafter specified from the date hereof until paid or until called for redemption, said interest to be payable semi-annually on the first days of April and October of each year upon presentation and surrender.

of the attached coupons as they severally became due. Both principal and interest of this bond are payable in lawful money of the United States of America at The Central Hanover Bank and Trust Company of New York City, in the City of New York, New York, and for the prompt payment of this bond and interest thereon as the same became due, the full faith, credit and all the resources of said City of Winter Haven are hereby irrevocably pledged.

Interest on the amount of this bond as evidenced by the interest coupons hereto attached shall be enforceable and collectible at the rate of three and one-half per cent per annum from date hereof to April 1, 1935; at the rate of four per cent per annum from and including April 1, 1935 to April 1, 1936; at the rate of four and one-half per cent per annum from and including April 1, 1936 to April 1, 1937; at the rate of five per cent per annum from and including April 1, 1937, to April 1, 1943; and at the rate of six per cent per annum thereafter; and if this bond shall not have been called and retired as hereinafter provided prior to maturity, the full interest at the rate of six per cent per annum less the amount theretofore paid from the date hereof to said maturity date shall also at that time be enforceable, collectible and paid upon presentation and surrender of said bond. The right is hereby reserved to call and redeem this bond on any interest payment date according to the following schedule:

On or prior to April 1, 1943, at par, accrued interest at the rate then prevailing as enforceable and collectible plus one-half of the deferred or accumulated interest for ten years:

On or prior to two years before the maturity of the respective bonds and during the period of time from April 1, 1943 to and including April 1, 1953 at par, accrued interest at the rate then prevailing as enforceable and col-

lectible plus three-fourths of the deferred or accumulated interest for ten years;

From April 1, 1953 to and including April 1, 1963 at par, accrued interest at the rate then prevailing as enforceable and collectible plus the full deferred or accumulated interest for ten years;

However at maturity this bond shall be payable at par plus the full amount of deferred interest which in this case shall be par, accrued interest at the rate then prevailing as enforceable and collectible and the full deferred interest being \$.....

In the event of the exercise of such right, notice of such redemption will be given as provided by the resolution adopted by the governing authority of the City of Winter Haven authorizing the issuance of this bond. Said bond when so called shall cease to bear interest on such redemption date and the interest otherwise payable at maturity to make up the total of six per cent except as provided in said call for redemption shall be deemed to be waived by the surrender by the holder of such called bond.

This bond shall be negotiable and is one of a series of bonds issued by the City of Winter Haven, for the purpose of refunding certain legal and valid indebtedness heretofore legally created by said City of Winter Haven, evidenced by bonds and interest thereon, for the payment of which the full faith and credit of said City of Winter Haven have been and are legally pledged, and said series is issued under authority of and in full compliance with the Constitution and Laws of the State of Florida, including Chapter 15772, Laws of Florida, 1931, the provisions of the City Charter and in pursuance of resolutions and proceedings of the City Commission of the City of Winter Haven duly and legally adopted and taken.

And It Is Hereby Certified And Recited that all acts, conditions and things required to be done precedent to

and in the issuance of said bonds have been properly done, happened and been performed in regular and due form as required by law, and that the indebtedness which is refunded by this series of bonds is a legally refundable, constitutional subsisting and legal obligation of said City of Winter Haven, and that neither the indebtedness which is refunded nor this series of bonds, together with all the other indebtedness of said City of Winter Haven, exceed any limitation prescribed by the Constitution or Statutes of the State of Florida, and that before the issuance of this bond, provision has been made for the levy and collection of a tax upon all the taxable property within said City of Winter Haven, which, together with other applicable revenue and income pledged to the payment of the interest and principal requirements, is sufficient in amount to provide for the payment of the principal and interest hereof as the same become due.

In Witness Whereof, the City of Winter Haven has caused this bond to be signed by its Mayor-Commissioner and attested by its City Auditor and Clerk under the corporate seal and the interest coupons hereto attached to be executed with the facsimile signatures of said Mayor-Commissioner and City Auditor and Clerk which officials by the execution of this bond do each adopt as and for their own proper signature his respective facsimile signature appearing on said coupons, all as of the first day of April, 1933.

Mayor-Commissioner, City of
Winter Haven, Florida.

Attested:

City Auditor and Clerk, City of
Winter Haven, Florida.

(Form of interest coupon for semi-annual payments.)

No.

\$

On the first day of 19 . . . , the City of Winter Haven, Polk County, Florida, will pay to bearer at The Central Hanover Bank and Trust Company of New York City, in the City of New York, the sum of Dollars, being the then enforceable and collectible interest on its City of Winter Haven General Refunding Bond Issue of 1933, Series "A", dated April 1, 1933, No. unless said bond shall have been theretofore called for redemption.

.....
 Mayor-Commissioner, City of
 Winter Haven, Florida.

.....
 City Auditor and Clerk, City of .
 Winter Haven, Florida.

(Form of Non-Interest Bearing, Non-Detachable Certificate or coupon for representing deferred interest due at maturity.)

No. S.

On the first day of 19 . . . , the City of Winter Haven, Polk County, Florida, will pay to bearer at The Central Hanover Bank and Trust Company of New York City, in the City of New York, New York, the sum of Dollars, being the then enforceable, collectible and deferred interest on its City of Winter Haven General Refunding Bond Issue of 1933, Series "A", dated April 1, 1933, No. unless said bond shall have been heretofore called for redemption.

.....
 Mayor-Commissioner, City of
 Winter Haven, Florida.

.....
 City Auditor and Clerk, City of
 Winter Haven, Florida.

(Validation Certificate.)

Validated and confirmed by decree of the Circuit Court of the Judicial Circuit of Florida, in and for Polk County, rendered on the day of 1933.

.....
Clerk of the Circuit Court of
Polk County, Florida.

Section 6. That for the purpose of refunding and retiring \$190,931.20 of the following described legal outstanding indebtedness of the City of Winter Haven, Florida:

Funding Bonds, dated July 15, 1925, bearing interest at the rate of 5½% per annum, payable semi-annually April 1st and October 1st of each year; in denomination of \$1,000 each, numbers 37, 38, 43 to 52, 55, 56, 61 to 63, 67 to 69, 72 to 90, due serially April 1, 1932 to 1940 inclusive	\$39,000.00
Past due Coupons and Interest	3,052.50

Refunding Bonds, Series "B", dated April 15, 1928, bearing interest at the rate of 5½% per annum, payable semi-annually April 15th and October 15th of each year; in denomination of \$1,000 each, numbers 1 to 3, 10 to 62, 68 to 87, due serially April 15, 1931 to 1952 inclusive	\$76,000.00
Past due Coupons and Interest	8,187.50

Refunding Bonds, Series "C", dated September 15, 1928, bearing interest at the rate of 5½% per annum, payable semi-annually March 15th and September 15th of each year; in denomination of \$1,000 each, numbers 1, 5	
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to 8, 10, 11, 15 to 18, 20 to 23, 27, 28, 32 to 35, 38 to 41, 45 to 64, 66, 68 to 74, due serially September 15, 1931 to 1953 inclusive \$53,000.00
 Past due Coupons and Interest 5,511.90

Refunding Bonds, Series "I-1", dated April 15, 1931, bearing interest at the rate of $5\frac{1}{2}\%$ per annum, payable semi-annually April 15th and October 15th of each year, in denomination of \$1,000 each, numbers 1 to 4, 15 and 16, due serially April 15, 1938 to 1945 inclusive \$ 6,000.00
 Past due Coupons and Interest 179.00

there are hereby authorized to be issued the negotiable coupon bonds of the said City of Winter Haven, Florida, in the aggregate amount of \$190,931.20 to be designated **General Refunding Bonds Issue of 1933, Series "B"**, the amount of which does not exceed the above described outstanding indebtedness.

Section 7. That said Refunding Bonds shall be dated April 1 1933, and shall bear interest from date thereof until paid, or until called for redemption, payable semi-annually on the first days of April and October of each year, which interest, except as hereinafter otherwise provided, shall be enforceable and collectible at the rate of Three and one-half per cent ($3\frac{1}{2}\%$) per annum from the date of the bonds to April 1, 1935; at the rate of Four per cent (4%) per annum from and including April 1, 1935 to April 1, 1936; at the rate of Four and one-half per cent ($4\frac{1}{2}\%$) per annum from and including April 1, 1936 to April 1, 1937; at the rate of Five per cent (5%) per annum from and including April 1, 1937 to April 1, 1943; and at the rate of Five and one-half per cent ($5\frac{1}{2}\%$) per annum from and including April 1, 1943 and thereafter; and at said rates shall be evidenced by coupons attached to each bond. If

any of said bonds shall not have been called and returned as hereinafter provided prior to maturity, full interest at the rate of Five and one-half per cent ($5\frac{1}{2}\%$) per annum less the amount theretofore paid in accordance with such interest coupons, shall also on such maturity date be enforceable, collectible and paid upon presentation of said bond as hereinafter provided, which said deferred interest shall be presented by a non-interest bearing, non-detachable certificate or coupon attached to each of said bonds. Each of said bonds shall be signed by the Mayor-Commissioner and attested by the City Auditor and Clerk of the City of Winter Haven and the corporate seal of said City shall be affixed to each of said bonds. Interest coupons (including the deferred interest coupon) attached to each of said bonds shall be executed with the facsimile signatures of the said Mayor-Commissioner and City Auditor and Clerk, and said officials by the execution of said bonds shall adopt as and for their owner proper signatures, their facsimile signatures on each of said coupons.

Section 8. That said General Refunding Bonds issue of 1933, Series "B", and the interest thereon shall be payable in lawful money of the United States of America at The Central Hanover Bank and Trust Company in the City of New York City, New York.

Section 9. That said bonds shall be numbered, be in denomination and subject to the right of prior redemption as hereinafter provided, shall mature as follows:

Numbers	Denomination	Amount	Maturity
1	\$ 131.20		
2 to 169	100.00		
170 to 185	1,000.00	\$32,931.20	April 1, 1948
186 to 194	1,000.00	9,000.00	April 1, 1949
195 to 200	1,000.00	6,000.00	April 1, 1950
201 to 209	1,000.00	9,000.00	April 1, 1951

Numbers	Denomination	Amount	Maturity
210 to 218	1,000.00	9,000.00	April 1, 1952
219 to 232	1,000.00	14,000.00	April 1, 1953
233 to 245	1,000.00	13,000.00	April 1, 1954
246 to 256	1,000.00	11,000.00	April 1, 1955
257 to 262	1,000.00	6,000.00	April 1, 1956
263 to 268	1,000.00	6,000.00	April 1, 1957
269 to 274	1,000.00	6,000.00	April 1, 1958
275 to 280	1,000.00	6,000.00	April 1, 1959
281 to 287	1,000.00	7,000.00	April 1, 1960
288 to 294	1,000.00	7,000.00	April 1, 1961
295 to 302	1,000.00	8,000.00	April 1, 1962
303 to 343	1,000.00	41,000.00	April 1, 1963

Section 10. That said General Refunding Bonds issue of 1933, Series "B", and the coupons thereto attached and the validation certificate to be indorsed thereon shall be in substantially the following form:

United States of America,
State of Florida,
County of Polk,

No. City of Winter Haven, \$.....

General Refunding Bond Issue of 1933,
Series "B".

Know All Men By These Presents: That the City of Winter Haven in the County of Polk, State of Florida, hereby acknowledges itself to be indebted and promises to pay to bearer the sum of Dollars on the first day of April, 19... with the option of prior redemption as hereinafter provided, and to pay interest on said sum as hereinafter specified from the date hereof until paid or until called for redemption, said interest to be payable semi-annually on the first days of April and October of each year upon presentation and surrender of the attached coupons as they severally become due. Both principal and interest of this bond are payable in lawful money of the

United States of America at The Central Hanover Bank and Trust Company of New York, City, in the City of New York, New York, and for the prompt payment of this bond and interest thereon as the same become due, the full faith, credit and all the resources of said City of Winter Haven are hereby irrevocably pledged.

Interest on the amount of this bond as evidenced by the interest coupons hereto attached shall be enforceable and collectible at the rate of three and one-half per cent per annum from date hereof to April 1, 1935; at the rate of four per cent per annum from and including April 1, 1935 to April 1 1936; at the rate of four and one-half per cent per annum from and including April 1, 1936 to April 1, 1937; at the rate of five per cent per annum from and including April 1, 1937 to April 1, 1943; and at the rate of five and one-half per cent per annum thereafter; and if this bond shall not have been called and retired as hereinafter provided prior to maturity, the full interest at the rate of five and one-half per cent per annum less the amount theretofore paid from the date hereof to said maturity date shall also at that time be enforceable, collectible and paid upon presentation and surrender of said bond. The right is hereby reserved to call and redeem this bond on any interest payment date according to the following schedule:

On or prior to April 1, 1943, at par, accrued interest at the rate then prevailing as enforceable and collectible plus one-half of the deferred or accumulated interest for ten years;

On or prior to two years before the maturity of the respective bonds and during the period of time from April 1, 1943 to and including April 1, 1953, at par accrued interest at the rate then prevailing as enforceable and collectible plus three-fourths of the deferred or accumulated interest for ten years;

From April 1, 1953 to and including April 1, 1963 at par, accrued interest at the rate then prevailing as enforceable and collectible plus the full deferred or accumulated interest for ten years.

However, at maturity this bond shall be payable at par plus the full amount of deferred interest which in this case shall be par, accrued interest at the rate then prevailing as enforceable and collectible and the full deferred interest being \$.....

In the event of the exercise of such right, notice of such redemption will be given as provided by the resolution adopted by the governing authority of the City of Winter Haven authorizing the issuance of this bond. Said bond when so called shall cease to bear interest on such redemption date and the interest otherwise payable at maturity to make up the total of five and one-half per cent except as provided in said call for redemption shall be deemed to be waived by the surrender by the holder of such called bond.

This bond shall be negotiable and is one of a series of bonds issued by the City of Winter Haven, for the purpose of refunding certain legal and valid indebtedness heretofore legally created by said City of Winter Haven, evidenced by bonds and interest thereon, for the payment of which the full faith and credit of said City of Winter Haven have been and are legally pledged, and said series is issued under authority of and in full compliance with the Constitution and Laws of the State of Florida, including Chapter 15772, Laws of Florida, 1931, the provisions of the City Charter, and in pursuance of resolutions and proceedings of the City Commission of the City of Winter Haven, duly and legally adopted and taken.

And It Is Hereby Certified And Recited that all acts, conditions and things required to be done precedent to and in the issuance of said bonds have been properly done.

happened and been performed in regular and due form as required by law, and that the indebtedness which is refunded by this series of bonds is a legally refundable, constitutional, subsisting and legal obligation of said City of Winter Haven, and that neither the indebtedness which is refunded nor this series of bonds together with all the other indebtedness of said City of Winter Haven, exceed any limitation prescribed by the Constitution or Statutes of the State of Florida, and that before the issuance of this bonds, provision has been made for the levy and collection of a tax upon all the taxable property within said City of Winter Haven, which, together with other applicable revenue and income pledged to the payment of the interest and principal requirements, is sufficient in amount to provide for the payment of the principal and interest hereof as the same become due.

In Witness Whereof, the City of Winter Haven, has caused this bond to be signed by its Mayor-Commissioner, and attested by its City Auditor and Clerk under the corporate seal and the interest coupons hereto attached to be executed with the facsimile signatures of said Mayor-Commissioner and City Auditor and Clerk which officials by the execution of this bond do each adopt as and for his own proper signature his respective facsimile signature appearing on said coupons, all as of the first day of April, 1933.

Mayor-Commissioner, City of
Winter Haven, Florida.

Attested:

City Auditor and Clerk, City of
Winter Haven, Florida.

(Form of interest coupon for semi-annual payments.)

No.

\$.....

On the first day of 19... the City of Winter Haven, Polk County, Florida, will pay to bearer at The Central Hanover Bank and Trust Company of New York, City, in the City of New York, New York, the sum of Dollars, being the then enforceable and collectible interest on its City of Winter Haven General Refunding Bond Issue of 1933, Series "B", dated April 1, 1933, No. unless said bond shall have been theretofore called for redemption.

.....
Mayor-Commissioner, City of
Winter Haven, Florida.

.....
City Auditor and Clerk, City of
Winter Haven, Florida.

(Form of Non-Interest Bearing, Non-Detachable Certificate or coupon for representing deferred interest due at maturity.)

No.

\$

On the first day of 19... the City of Winter Haven, Polk County, Florida, will pay to bearer at The Central Hanover Bank and Trust Company of New York, City, in the City of New York, New York, the sum of Dollars, being the then enforceable and collectible and deferred interest on its City of Winter Haven General Refunding Bond Issue of 1933, Series "B", dated April 1, 1933, No. unless said bond shall have been heretofore called for redemption.

.....
Mayor-Commissioner, City of
Winter Haven, Florida.

.....
City Auditor and Clerk, City of
Winter Haven, Florida.

(Validation Certificate.)

Validated and confirmed by decree of the Circuit Court of the Judicial Circuit of Florida, in and for Polk County, Rendered on the day of 1933.

.....
Clerk of the Circuit Court of
Polk County, Florida.

Section 11. That the City Commission hereby agrees to review financial reports of said City of Winter Haven at least each thirty days and whenever and as often as there is a surplus in the sinking funds created for the payment of said General Refunding Bonds and interest thereon of \$5000.00 or more, after allowing for payment of bonds called for redemption, matured coupons not yet presented, and if and to the extent necessary in the discretion of the governing body, the succeeding principal and interest payments as they become due, said surplus shall be used by the City Commission, being the governing authority of the City of Winter Haven, for the purchase of General Refunding Bonds of this issue in the following manner: The governing authority shall designate a date, which shall be not less than thirty nor more than sixty days from the time such date is designated, at which time the governing authority will receive sealed tenders of bonds of this General Refunding issue, and act upon such tenders in open session. Upon determining said date, the governing authority shall notify the Refunding Agency and any bondholder so requesting. Notice of the time and place of receiving such tenders shall be published once, at least thirty days before said time, in at least two newspapers published and having a general circulation, one of which newspapers shall be published in Winter Haven, Florida, and the other in the City of New York, State of New York. The entire available surplus fund for the retirement of bonds shall be

used to purchase bonds offered at the lowest prices; provided, however, that if the governing authority of the City of Winter Haven shall be dissatisfied with any or all tenders received, then it shall have the option of rejecting any or all such tenders within sixty days of such rejection it shall re-advertise or additional sealed tenders, and upon said second re-advertisement the governing authority shall accept bonds so tendered until all of the funds available shall have been used in the purchase thereof as provided in this paragraph; provided further, however, that if no offers are received at or less than the then callable price, the governing authority shall reject all offers and proceed to call bonds by lot, as hereinafter set out; and provided, further, that during the first eight years after the date of said General Refunding Bonds, the City of Winter Haven shall accept the lowest offerings, based on the par value, and thereafter the City shall have the option to accept the lowest offerings, based on the par value or based on the income yield to maturity, taking into consideration the deferred interest value of the bonds if not redeemed prior to maturity.

All of said General Refunding Bonds, Series "A", shall be callable as hereinafter set out, upon any interest payment date, according to the following schedule:

On or prior to April 1, 1943, at par, accrued interest at the rate then prevailing as enforceable and collectible, plus one-half of the deferred interest for the period of ten years, such one-half of said deferred interest being \$72.50 on each \$1,000 bond, or at the same rate on bonds of smaller denomination.

On or prior to two years before the maturity of the respective bonds and during the period of time from April 1, 1943 to and including April 1, 1953, at par, accrued interest at the rate then prevailing as enforceable and collectible.

plus three-fourths of the deferred interest being \$108.75 on each \$1,000 bond, or at the same rate on bonds of smaller denomination.

For the period of time from April 1, 1953 to and including April 1, 1963, at par, accrued interest at the rate then prevailing as enforceable and collectible, plus the full deferred interest for the period of ten years, such full deferred interest being \$145.00 on each \$1,000 bond, or at the same rate on bonds of smaller denomination.

All of said General Refunding Bonds, Series "B", shall be callable as hereinafter set out, upon any interest payment date, according to the following schedule:

On or prior to April 1, 1943, at par, accrued interest at the rate then prevailing as enforceable and collectible, plus one-half of the deferred interest for the period of ten years, such one-half of said deferred interest being \$47.50 on each \$1,000 bond, or at the same rate on bonds of smaller denomination.

On or prior to two years before the maturity of the respective bonds and during the period of time from April 1, 1943 to and including April 1, 1953, at par, accrued interest at the rate then prevailing as enforceable and collectible, plus three-fourths of the deferred interest being \$71.25 on each \$1,000 bond, or at the same rate on bonds of smaller denomination.

For the period of time from April 1, 1953 to and including April 7, 1963, at par, accrued interest at the rate then prevailing as enforceable and collectible, plus the full deferred interest for the period of ten years, such full deferred interest being \$95.00 on each \$1,000 bond, or at the same rate on bonds of smaller denomination.

However, at the respective maturity dates all bonds shall be payable at par, accrued interest at the rate then prevailing as enforceable and collectible and the full deferred interest, being \$145.00 on each \$1,000 bond, or at the same rate on bonds of smaller denomination.

The bonds to be called shall be drawn by lot from the next succeeding definite maturity, and notice of such redemption, specifying the bonds to be redeemed, shall be filed at the place of payment of the principal and interest on said bonds, The Central Hanover Bank and Trust Company of New York City, New York, at least thirty days prior to such redemption date, and notice of intention to redeem said bonds shall be published at least once in at least two newspapers of general circulation, one or which newspapers shall be printed and published in Winter Haven, Florida, if there be one, and the other (or both, in the event there be no such newspaper printed and published in said City) shall be published in the City of New York, New York. All bonds called for redemption shall cease to bear interest on such redemption date and the deferred interest otherwise payable at maturity except as provided in said call for redemption shall be deemed to be waived by the surrender by the holders of such called bonds.

Section 12. That the full faith and credit of said City of Winter Haven, Florida, shall be pledged for the full and prompt payment of the principal and interest of said bonds; and the governing authority of the City of Winter Haven, Florida, hereby covenants and agrees with the holders of any and all General Refunding Bonds and interest coupons issued under the provisions of this resolution that the said City of Winter Haven, Florida, will make prompt payment of the same when due.

Section 13. That for the purpose of adequately providing for the payment of the interest coupons and for a sinking fund for the retirement of all of said General Refunding Bonds, Issue of 1933 herein authorized; the governing authority of the City of Winter Haven, Florida, covenants and agrees with the holders of the General Refunding Bonds, Issue of 1933, that in the annual budget and ad valorem tax levy to be prepared and made in each of the years 1933 to 1963 inclusive, there shall be included a levy of an ad valorem tax upon all the taxable property in the City in an amount to aggregate annually not less than the amounts shown opposite the respective years in the following schedule:

Year.	Amount of Levy
1933	\$105,000.
1934	105,000.
1935	110,000.
1936	115,000.
1937	120,000.
1938	120,000.
1939	120,000.
1940	120,000.
1941	120,000.
1942	120,000.
1943	120,000.
1944	120,000.
1945	120,000.
1946	120,000.
1947	120,000.
1948	120,000.
1949	120,000.
1950	120,000.
1951	120,000.
1952	120,000.
1953	120,000.

Year	Amount of Levy
1954	120,000.
1955	120,000.
1956	120,000.
1957	120,000.
1958	120,000.
1959	120,000.
1960	120,000.
1961	120,000.
1962	120,000.
1963	120,000.

That such tax shall be levied and computed upon the extended and finally equalized valuation of all the taxable property of the City of Winter Haven, Florida. Provided, however, that the governing authority may reduce said annual levies set out in the schedule above by the equivalent of Six Per Cent (6%) on the principal amount of any bonds which may be retired, from any source other than from the proceeds of said above described annual pledge or levy; and provided, further that such reductions from the specified tax levies shall not be effective during the first four years of the term of the General Refunding Bonds, except as to any retirement above the amounts shown in the following schedule of the present principal indebtedness of the City of Winter Haven, from the designated sources between the dates of May 16, 1933, and the date of preparation of budget in the years indicated:

Year	Total Retirement Before Reduction in Levies Effective
1933	\$250,000.00
1934	250,000.00
1935	167,000.00
1936	84,000.00

If during any year the City of Winter Haven realizes in cash, from revenues pledged to the interest and sinking fund under the provisions of this resolution, a sum in excess of the annual interest and sinking fund pledges set out in the above schedule, then and in that event such excess over and above such pledges may, at the option of the City Commission, be used for the purchase and/or retirement of additional bonds, or may be carried over to the next succeeding budget and credited against the next years requirement and the tax levy for such succeeding year reduced in a similar amount.

In determining the number of mills to be levied for each year beginning with the budget and tax levy made in the year 1933 and annually thereafter to and including the year 1937, the City Commission shall assume that the tax collections for each current year during the period will be one hundred per cent (100%), and in determining the number of mills to be levied for and during the remaining term of the General Refunding Bonds, 1938 to 1963 inclusive, the City Commission shall assume that the percentage of tax collections for the current year under consideration will not exceed the average percentage of collection of ad valorem taxes for the last past three tax collection years immediately preceding the tax year for which the levy is being made. In addition to the minimum amount hereinabove specified to be raised each year, beginning with the year 1938, the City Commission shall levy in each of the years 1938 to 1942 inclusive, a sum equivalent to one-fifth of any amount less than the total of the first five year's levies, (\$555,000.00) which has been paid into the interest and sinking fund account for the payment of the bonds authorized to be refunded or the Refunding Bonds herein authorized, during the five fiscal periods, 1933 to 1937, inclusive. Provided however, that at all times during the life of said Refunding Bonds, there shall be and there is hereby levied a minimum tax each year during the

years 1933 to 1963 inclusive, or so long as any of said General Refunding Bonds are outstanding, sufficient to provide for the actual interest and principal maturities of the year next succeeding that in which the budget is being made and prepared.

Section 14. That all revenues and income of the City of Winter Haven now or hereafter derived from sources other than ad valorem taxes, and not otherwise specifically appropriated by law for other purposes (excluding revenue and income from special assessments, city owned real property, and present operating revenues from sources other than ad valorem taxes, or their future substitutes), shall be and are hereby pledged to the payment of the General Refunding Bonds herein authorized; and when such revenues and income are received, allocated, or made available, they shall be placed in the interest and sinking fund account for the payment of said General Refunding Bonds and shall not be used or appropriated for any purpose other than in the payment of interest to accrue from time to time on said Refunding Bonds, and for the retirement of said Refunding Bonds as provided in this resolution; that upon receipt of any such revenues and income from newly created sources and application of the same as herein provided, such revenues and income shall be credited against the next ensuing budget requirement for the interest and sinking fund of the General Refunding Bonds authorized herein, and the tax levy decreased accordingly.

That all cash receipts from the collection of delinquent taxes which were levied for interest or principal of the bonds authorized to be refunded by this resolution, and all cash receipts now or hereafter collected from the special assessments heretofore made against property abutting public improvements and primarily pledged to retire the interest and principal of certain of the bonds authorized to

be refunded by this resolution; and the cash income and revenues now or hereafter received from real property owned by the City of Winter Haven, now or hereafter to be acquired, shall be and the same are hereby pledged to the payment of the Interest and principal of the General Refunding Bonds herein authorized, and upon the receipt of any of such funds from any of the sources hereinabove specifically referred to in this Section, such receipts shall be placed in the interest and sinking fund account for said General Refunding Bonds herein authorized, and shall be used for the retirement of said interest and bonds under the provisions of this resolution and shall supplement the annual tax levies provided for herein.

That the City Commission, being the governing authority of the City of Winter Haven, for and on behalf of said City, hereby agrees that it shall use its best efforts to enforce collections of all past due ad valorem taxes and special assessments as rapidly as possible, under such plan of operation as the governing authority of said City of Winter Haven shall consider adequate, to the end that said past due ad valorem taxes and special assessments shall be liquidated as expeditiously as possible, taking into consideration the best interests of the City of Winter Haven, Florida, and its creditors.

Section 15. Insofar as it is legally possible, the City Commission of Winter Haven, Florida, shall require that all ad valorem taxes for the years 1933 to 1963 inclusive, shall be paid in lawful money of the United States of America, and that said officials shall not accept nor authorize the acceptance of bonds and or interest coupons in payment of said ad valorem taxes.

Section 16. That if the annual budget of appropriations of the City of Winter Haven (except debt service requirements) is exceeded during any year while any of the Gen-

eral Refunding Bonds herein authorized are outstanding and unpaid, that the general funds of the City of Winter Haven will for such year be chargeable the next ensuing year with an amount equal to such excess expenditures, and such amount will be taken from the general fund and placed in the interest and sinking fund for the payment of the Refunding Bonds herein authorized, and will not be considered a part of the respective annual requirements hereinabove described.

Section 17. That the bonds hereby authorized to be executed as soon after the adoption of this resolution as may be, and promptly upon completion of the validation of the bonds as provided in Section 21 hereof, said executed bonds, with the interest coupons attached thereto, shall be by the City Auditor and Clerk of the City of Winter Haven, Florida, deposited with Central Hanover Bank and Trust Company, in the City of New York, State of New York, as escrow agent, with appropriate directions that as and when the indebtedness herein authorized to be refunded is surrendered, there shall be delivered in exchange therefor a like amount of said General Refunding Bonds, under the sponsorship and direction of the Refunding Agency, all pursuant to and as contemplated by the agreement heretofore entered into with said Winter Haven Refunding Agency. Said escrow agent shall be authorized and directed to cancel the indebtedness so surrendered and return same to the City Auditor and Clerk of the City of Winter Haven, Florida, with proper report indicating the particular General Refunding Bonds delivered in exchange therefor.

It is hereby the declared intention that said General Refunding Bonds are to be issued as of April 1, 1933, for the purpose of refinancing as of that date the like amount of indebtedness of said City of Winter Haven, Florida, then existing.

General Refunding Bonds, Series "A", bearing numbers 1 to 720, maturing April 1, 1948 shall be applied to the retirement of a like amount of interest coupons and interest outstanding and bonds maturing April 1, 1933 and prior thereto. General Refunding Bonds, Series "A", bearing numbers 721 to 1990, inclusive, maturing in each of the years 1949 to 1962 inclusive, shall be applied to the retirement of a like amount of bonds maturing in each of the years 1934 to 1947 inclusive, respectively; and General Refunding Bonds, Series "A", bearing numbers 1991 to 2210, inclusive, maturing in the year 1963, shall be applied to the retirement of a like amount of bonds maturing as set out in the preamble of this resolution in the years 1948 and subsequent thereto.

General Refunding Bonds, Series "B", bearing numbers 1 to 169, inclusive, maturing April 1, 1948, shall be applied to the retirement of a like amount of interest coupons and interest outstanding; General Refunding Bonds, Series "B", bearing numbers 170 to 185 inclusive, maturing April 1, 1948, shall be applied to the retirement of a like amount of bonds maturing April 1, 1933 and prior thereto. General Refunding Bonds, Series "B", bearing numbers 186 to 302, inclusive, maturing in each of the years 1949 to 1962 inclusive, shall be applied to the retirement of a like amount of bonds maturing in each of the years 1934 to 1947 inclusive, respectively; and General Refunding Bonds, Series "B", bearing numbers 303 to 343, inclusive, maturing in the year 1963 shall be applied to the retirement of a like amount of Bonds maturing as set out in the preamble of this resolution, in the year 1948 and subsequent thereto.

In all cases, coupons evidencing interest on the Bonds authorized to be refunded hereby, subsequent to April 1, 1933, must accompany the respective bonds when surrendered for exchange.

Section 18. The provisions hereinbefore made for a sinking fund to pay the principal and interest of the General Refunding Bonds hereby authorized shall inure solely and only to the payment of said bonds, and any funds now or hereafter available for the payment of the indebtedness authorized to be refunded shall be used to pay the principal and interest of the General Refunding Bonds hereby authorized. If and until all of the indebtedness hereby authorized to be refunded is surrendered and exchanged, a proportionate part of the sinking fund herein provided may be used and shall constitute the exclusive resources available for the payment of such portion of the indebtedness to be refunded not so surrendered.

Section 19. All covenants, representation, agreements and undertakings herein set out, as well as those appearing on the face of each of said General Refunding Bonds, shall constitute a contract with the holders of the General Refunding bonds and shall be enforceable by suit, action or mandamus on behalf of any bondholder in any Court of competent jurisdiction whether or not a monetary default shall then prevail in the payment of the principal or interest of such General Refunding Bonds.

Section 20. That if any clause, section, paragraph or provision of this resolution or of the General Refunding Bonds hereby authorized be declared unenforceable by any Court of final jurisdiction, it shall not affect or invalidate any remainder thereof, and if any of the bonds hereby authorized be adjudged illegal or unenforceable in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment.

Section 21. That the attorney for the City of Winter Haven, Florida, be and he is hereby authorized and di-

rected to take appropriate proceedings in the Circuit Court of the Tenth Judicial Circuit of Florida, in and for Polk County, for the validation of said bonds, in accordance with the provisions of the General Laws of Florida, and is authorized to sign any pleadings in such proceedings for and on behalf of said City of Winter Haven, Florida.

Section 22. Be It Further Resolved that whereas, the said City of Winter Haven is in urgent need of the financial relief afforded by this refunding procedure to prevent the impairment of the credit of said city; Therefore, this resolution is deemed and considered to be necessary for the immediate preservation of public peace, property, health and safety, and is hereby passed as an emergency measure, and shall become effective immediately upon its passage.

Passed at a Special session of the City Commission of the City of Winter Haven, Florida, held at 7:00 o'clock P. M. on the 24th day of July, A. D. 1933, by the following vote:

	Yeas	Nays
Mayor-Commissioner	Warren	None
Commissioner	Stull	
Commissioner	Schulz	

(Signed) O. P. WARREN,
Mayor-Commissioner.


(Signed) JAY STULL,
Commissioner.

(Signed) W. H. SCHULZ, JR.,
Commissioner.

(Signed) JOHN C. TERWILLIGER,
City Auditor and Clerk.

Thereupon said resolution was read in full by the Clerk. Commissioner Schulz moved that the provision of the City Charter requiring resolutions before passage to be read at two meetings not less than one week apart, be dispensed with, and that said resolutions be read in full a second time.

Said motion was seconded by Commissioner Stull and the question was put by roll call with the following result.

Yeas: 
 Mayor-Commissioner Warren
 Commissioner Schulz
 Commissioner Stull

Nays:
 None

Mayor-Commissioner Warren declared said motion duly carried and said resolution was read in full a second time by the Clerk.

Thereupon Commissioner Stull moved that the provision of the City Charter requiring resolutions before passage to be read at two meetings not less than one week apart, be dispensed with and that said resolution be finally passed as read. Said motion was seconded by Commissioner Schulz and a vote was had thereon by roll call with the following results:

Yeas: 1
 Mayor-Commissioner Warren
 Commissioner Schulz
 Commissioner Stull

Nays:
 None

Thereupon Mayor-Commissioner Warren declared said resolution finally passed and adopted as read.

There being no further business to come before the Commission, it was moved and seconded and duly carried that the City Commission adjourn, and it was so ordered.

(Signed) O. P. WARREN,

Mayor-Commissioner.

(Signed) JOHN C. TERWILLIGER,

City Auditor and Clerk.

56

EXHIBIT B.

Minute of a Special Meeting of the City Commission of the City of Winter Haven, Held on the 7th Day of March, A. D. 1934, at 11:00 O'clock A. M.

A special meeting of the City Commission of the City of Winter Haven, Florida, was held in the City Hall of said city on March 7, 1934, at 11:00 o'clock A. M., there being present at said meeting Mayor-Commissioner E. B. Walthall, Commissioner Jay Stull, Commissioner W. H. Schulz, Jr., Commissioner E. H. Sweet and Commissioner T. W. Brogden; City Manager L. C. Bewsey and City Clerk John C. Terwilliger.

After the meeting was called to order Mayor-Commissioner Walthall announced that the purpose of the meeting was, among other things, to consider the passage of a resolution amending the resolution of the City Commission adopted on the 24th day of July, A. D. 1933, relative to the issuance of \$2,148,054.78 of negotiable refunding bonds of the City of Winter Haven, for the purpose of providing for the cancellation of \$71,000.00 par value of one thousand dollar bonds maturing April 1, 1948, provided for in said resolution of July 24, 1933, and the issuance in lieu thereof of three hundred and forty (340) bonds of the denomination of one hundred dollars each and seventy-

four (74) bonds of the denomination of five hundred dollars each, to mature on April 1, 1933.

After full consideration of the matter by the City Commission, Commissioner Schulz introduced and moved the passage of the following resolution, to-wit:

Resolution amending a resolution of the City Commission adopted on the 24th day of July, A. D. 1933, entitled:

"Resolution providing for the issuance of \$2,148,054.78 of negotiable coupon bonds of the City of Winter Haven, Florida, to be known as City of Winter Haven, Florida, General Refunding Bonds, issue of 1933, for the purpose of refunding a like amount of legal and valid outstanding bonds and interest of said city: Specifying the form of said bonds and providing for the manner of issuance and payment thereof; And declaring this resolution to be an emergency measure."

So as to provide for the cancellation of certain of the bonds described in said resolution and the issuance of other bonds in lieu thereof and declaring this resolution to be an emergency measure.

Whereas, under date of May 16, 1933, the City Commission of the City of Winter Haven ratified and confirmed an agreement pursuant to which there has been created the Winter Haven, Florida, Refunding Agency, which is to work in cooperation with this City Commission in the refinancing of the indebtedness of said City, and which agreement contemplates refinancing of the indebtedness of said city of Winter Haven, Florida, as provided therein; and

Whereas, by Paragraph 4 of said agreement of May 16, 1933, it was, among other things, provided as follows:

"It is further mutually understood and agreed between the parties hereto that said refunding bonds shall be dated April 1, 1933, and shall mature so as to provide that each maturity of the presently outstanding bonds shall be exchanged for refunding bonds maturing on April 1st of the year nearest to fifteen (15) years from the maturity date of such presently outstanding bonds as are exchanged therefor, it being intended that each refunding bond shall retain relatively the same position in the debt structure of the City of Winter Haven as the presently outstanding bonds exchanged therefor; provided, however, that no maturities of the refunding bonds shall extend over thirty (30) years from date of issue; and provided further, that all maturities of April 1, 1933, and prior thereto, whether of principal or interest shall be exchanged for refunding bonds of the City of Winter Haven maturing on April 1, 1948;"

and

Whereas, on July 24, 1933, this City Commission duly adopted a resolution providing for the issuance of two million one hundred and forty-eight thousand fifty-four and 78/100 (\$2,148,054.78) Dollars of negotiable bonds of the City of Winter Haven, for the purpose of refunding a like amount of legal and valid outstanding indebtedness of said city, in accordance with the terms of said agreement of May 16, 1933; and

Whereas, in Section 4 of said Resolution of July 24, 1933, the number, par value and aggregate amount of bonds believed to be necessary to be issued to carry into effect the provisions of said Paragraph 4 of said Agreement of May 16, 1933, were specifically set out and described, and were

thereafter duly validated, issued and delivered to the First National Bank of Chicago, Illinois, as Exchange Agent of the City of Winter Haven and of the said Winter Haven Refunding Agency, for exchange for outstanding Winter Haven bonds, as provided in said agreement and in said resolution; and,

Whereas, it has now been determined by said Winter Haven Refunding Agency and by the City of Winter Haven that the number of bonds of principal amounts less than one thousand dollars will ~~not be~~ sufficient to carry out the plan of exchange provided for in said agreement of May 16, 1933, in that the number of bonds of denominations less than one thousand dollars is inadequate to furnish all bondholders consenting to the plan with bonds in the proper amounts to take up and pay amounts of past due interest and interest coupons due up to April 1, 1933, and there is a larger number of one Thousand Dollars bonds than will be necessary to effect said exchanges in accordance with the terms of said agreement, and it has become necessary to convert seventy-one of said one thousand dollar bonds, being numbers 319 to 389, both numbers inclusive, of the bonds described in Section 4 of said resolution into bonds of smaller denominations to effect the exchange as provided for in said resolution of July 24, 1933, and said agreement of May 16, 1933;

Now, Therefore, Be It Resolved By The City Commission, Being The Governing Authority Of The City Of Winter Haven, Florida:

Section 1.—That Section 4 of the Resolution of this City Commission adopted on July 24, 1933, described in the title hereof, be and the same is hereby amended so as to provide for the cancellation and delivery to the City Treasurer of the City of Winter Haven of seventy-one of the General Refunding Bonds, Issue of 1933, Series A, of the denomina-

tion of one thousand dollars each, described in Section 4 of said Resolution of July 24, 1933, and being bonds numbered from 319 to 389, both numbers inclusive, and maturing April 1, 1948; and that there be issued in lieu thereof three hundred and forty bonds of said General Refunding Bonds, Issue of 1933, Series A, in the denomination of one hundred dollars each, to mature April 1, 1948, and to be numbered from 10 to 3400, both numbers inclusive; and that there shall be further issued in lieu of said seventy-one bonds hereby provided to be canceled, seventy-four General Refunding Bonds, Issue of 1933, Series A, in the principal amount of five hundred dollars each, and numbered from 1D to 74D, both numbers inclusive, and to mature on April 1, 1948, the total principal amount of the said bonds being seventy-one thousand (\$71,000.00) dollars.

Section 2—That the form of said new bonds herein provided to be issued in lieu of said canceled bonds be the same in all respects as provided by Section 5 of said resolution of July 24, 1933, and that all other provisions of said resolution of July 24, 1933, be and the same are hereby applicable to said bonds by this resolution provided,—it being the purpose and intention of this resolution merely to substitute bonds of smaller denominations for the bonds canceled hereby, the aggregate amount of the total bonds to be issued to be the same as provided for in said resolution of July 24, 1933; and that the said new bonds be executed and the validation certificate provided for in said resolution be signed in the same manner as the original bonds, and when so executed, that said bonds be delivered to the First National Bank of Chicago, Illinois, for the purpose of exchanging for outstanding bonds in accordance with the provisions of said resolution of July 24, 1933, and the terms of the agreement of May 16, 1933, recited in the preambles hereof.

Section 3—Be It Further Resolved that, whereas, the said past due interest and interest coupons of presently outstanding bonds of the City of Winter Haven are ready for exchange in the hands of the Exchange Agent, and it is urgently necessary that the new bonds provided by this resolution be delivered to the Exchange Agent without delay;

Therefore, this Resolution is deemed and considered to be necessary for the immediate preservation of public peace, property, health and safety, and is hereby passed as an emergency measure.

Passed at a special session of the City Commission of the City of Winter Haven, held at 11:00 o'clock, A. M. on the 7th day of March, A. D. 1934, by the following vote:

Yeas	Nays.
Mayor-Commissioner Walthall,	None
Commissioner Stull,	
Commissioner Schulz,	
Commissioner Sweet,	
Commissioner Brogden,	

(Signed) JAY STULL,
Mayor-Commissioner.

(Signed) T. W. BROGDEN,
Commissioner.

(Signed) W. H. SCHULZ, JR.,
Commissioner.

(Signed) E. H. SWEET,
Commissioner.

(Signed) E. B. WALTHALL,
Commissioner.

Attest:

(Signed) JOHN C. TERWILLIGER,
City Auditor and Clerk.

Thereupon, said resolution was read in full by the Clerk.

Commissioner Schulz moved that the provision of the City Charter requiring resolution before passage to be read in full at two meetings of the City Commission not less than one week apart be dispensed with, and that said resolution be read in full a second time by the Clerk. Said motion was seconded by Commissioner Brogden and the question was put by roll call with the following result:

Yeas	Nays.
Mayor-Commissioner Walthall,	None
Commissioner Stull,	
Commissioner Schulz,	
Commissioner Sweet,	
Commissioner Brogden,	

Thereupon Mayor-Commissioner Walthall declared said motion duly carried and said resolution was read in full a second time by the Clerk.

Thereupon Commissioner Sweet moved that the provision of the City Charter requiring resolutions before passage to be read at two meetings not less than one week apart be dispensed with, and that said resolution be finally passed as read. Said motion was seconded by Commissioner Schulz and a vote was had thereon by roll call with the following result:

Yeas	Nays.
Mayor-Commissioner Walthall,	None
Commissioner Stull,	
Commissioner Schulz,	
Commissioner Sweet,	
Commissioner Brogden,	

Whereupon, Mayor-Commissioner Walthall declared said resolution finally passed and adopted as read.

There being no further business to come before the commission, it was moved and seconded and duly carried that the City Commission adjourn, and it was so ordered.

(Signed) E. B. WALTHALL,
Mayor-Commissioner.

Attest:

(Signed) JOHN C. TERWILLIGER,
City Auditor and Clerk.

EXHIBIT "C"

Schedule 1.

City of Winter Haven, Florida, General Refunding Series A Bonds 3 1/2 % 6 % Dated April 1, 1933.

Number of Bonds	Numbers	Maturity Date	Principal Each Bond	Aggregate Principal
10	C4 6, C19, C20, C28, C29, C51, C52, C181	April 1, 1948	\$ 100.00	\$1,000.00
14	120 125, 188/191, 211/214	April 1, 1948	100.00	1,400.00
7	D3, D9, D36/40	April 1, 1948	500.00	3,500.00
31	432 434, 444, 445, 494, 495, 539, 543/547, 599/606, 620/629	April 1, 1948	1,000.00	31,000.00
24	721/725, 748/752, 780, 833, 862/866, 877, 892/897	April 1, 1949	1,000.00	24,000.00
18	937, 938, 943, 944, 946/951, 968/972, 982, 1062, 1063	April 1, 1950	1,000.00	18,000.00
35	1148/1156, 1159/1162, 1203/1205, 1244, 1302/1305, 1329/1342	April 1, 1951	1,000.00	35,090.00
49	1399/1402, 1409, 1472/1476, 1489/1498, 1504, 1505, 1518/1544	April 1, 1952	1,000.00	49,000.00
2	1580, 1600	April 1, 1953	1,000.00	2,000.00
10	1614, 1621, 1622/1627/1631, 1644, 1646	April 1, 1954	1,000.00	10,000.00
6	1659, 1660, 1672, 1683, 1690, 1698	April 1, 1955	1,000.00	6,000.00
6	1707, 1708, 1722, 1737, 1740, 1741	April 1, 1956	1,000.00	6,000.00

8	1754/1756, 1761, 1771, 1772, 1777, 1785	April 1, 1957	1,000.00	8,000.00
5	1797, 1798, 1816, 1818, 1835	April 1, 1958	1,000.00	5,000.00
3	1846, 1848, 1849	April 1, 1959	1,000.00	3,000.00
3	1886, 1887, 1909	April 1, 1960	1,000.00	3,000.00
9	1916, 1917, 1919, 1922, 1928, 1930, 1933	April 1, 1961	1,000.00	9,000.00
5	1955, 1957, 1961, 1969, 1970	April 1, 1962	1,000.00	5,000.00
42	2004/2011, 2018, 2038, 2047, 2048, 2065, 2077/2088, 2098, 2103, 2147/2151, 2154, 2162, 2189, 2202/ 2204	April 1, 1963	1,000.00	42,000.00
Total This Issue				<u>\$261,900.00</u>

95

All of the above-described bonds have attached coupons due October 1, 1941, and subsequent to date of maturity.

Schedule 2.

City of Winter Haven, Florida, General Refunding Series B. Bonds 3½/5½% Dated April 1, 1933.

Number of Bonds	Numbers	Maturity Date	Principal Each Bond	Aggregate Principal
3	171, 172, 183	April 1, 1948	\$1,000.00	\$3,000.00

2	191, 192	April 1, 1949	1,000.00	2,000.00
1	195	April 1, 1950	1,000.00	1,000.00
4	204, 207	April 1, 1951	1,000.00	4,000.00
2	211, 212	April 1, 1952	1,000.00	2,000.00
2	224, 225	April 1, 1953	1,000.00	2,000.00
4	240, 241, 243, 244	April 1, 1954	1,000.00	4,000.00
3	251, 254, 255	April 1, 1955	1,000.00	3,000.00
1	283	April 1, 1960	1,000.00	1,000.00
1	292	April 1, 1961	1,000.00	1,000.00
13	311, 322, 334	April 1, 1963	1,000.00	13,000.00
Total This Issue				\$36,000.00
Total All Issues				\$297,900.00

All of the above described bonds have attached coupons due October 1, 1941, and subsequent to date of maturity.

(4) Notice of Redemption appearing in The Winter Haven
Daily Chief, a newspaper published in Winter Haven, Florida

4, 1941

67

(5) Corrective Notice of Red Redemption appearing in The
Winter Haven Daily Chief, a newspaper published in Winter Haven, Florida

SUMMONS ISSUED ON 9 9 41 AND MARSHAL'S RETURN THEREON, omitted from the printed record, pursuant to Rule 23 of the Court.

* * * * *

On the 27th day of September 1941, the Defendants filed their Motion to Dismiss in the following words and figures to-wit:

(Title Omitted.)

The defendants move the Court as follows:

1. To dismiss the action because the Complaint fails to state a claim against the defendants upon which relief can be granted.

(a) The questions of law involved have been determined by the Supreme Court of Florida adversely to plaintiffs.

(Signed) HENRY SINCLAIR.

(Henry Sinclair)

Attorney for defendants.

Address: Coker Building,
Winter Haven, Florida.

NOTICE OF MOTION:

To: D. C. Hull and
 Hull, Lands & Whitehair,
 Attorneys for Plaintiffs,
 Deland, Florida.

Please take notice, that the undersigned will bring the above motion on for hearing before this Court in the Chambers of W. J. Barker, United States District Judge, United States Post Office Building, Tampa, Florida, on the 14th day of October, A. D. 1941, at 2:00 o'clock P. M. of that day or as soon thereafter as counsel can be heard.

(Signed) HENRY SINCLAIR,

(Henry Sinclair)

Attorney for defendants.

Address: Coker Building,
 Winter Haven, Florida.

State of Florida,
 County of Polk, ss.

Henry Sinclair, being duly sworn says that he is attorney for the defendants in the within entitled cause, and that on the 26th day of September, A. D. 1941, at 6:00 o'clock P. M. he did mail to D. C. Hull and Hull Landis & Whitehair, attorneys for the Plaintiffs in the within entitled cause, a true and complete copy of the above and foregoing Motion to Dismiss and Notice of Motion, enclosed in an envelope bearing the requisite amount of United States postage stamps, addressed as follows: Messrs. D. C. Hull and Hull, Landis & Whitehair, Attorneys at Law, DeLand, Florida, by depositing said envelope properly sealed, stamped and addressed as aforesaid in the Post Office at Winter Haven, Florida, and that the address on said en-

velope is the usual Post Office address of the Attorneys for the Plaintiffs.

HENRY SINCLAIR,
(Henry Sinclair)
Attorney for the Defendants.

Address: Coker Building,
Winter Haven, Florida.

Sworn to and subscribed before me this 26th day of
September, A. D. 1941.

(Seal) FLORENCE CECIL,
Notary Public, State of Flor-
ida at Large.

My Commission expires Sept. 23, 1944.

On the 7th day of March 1942, The Court entered an Order granting Motion to Dismiss and entered in Civil Order Book 3 at page 511 in the following words and figures to-wit:

(Title Omitted.)

This cause came on for hearing on motion of the defendants filed September 27th, 1941, to dismiss complaint of W. J. Meredith and others, Plaintiffs, filed September 9th, 1941, and after argument of counsel of all parties affected and due consideration by the Court. It Is Ordered And Adjudged:

1. That said motion to dismiss be and the same is hereby granted.

2. That the Plaintiffs have ten days within which to amend.

Done And Ordered in Tampa, Florida, this the 7th day of March 1942.

WILLIAM J. BARKER,
United States District Judge.

Amendment to Complaint filed Mar. 16, 1942, in the following words and figures to-wit:

(Title Omitted.)

Come now the plaintiffs, W. J. Meredith, James C. Martin and A. R. Ohmart, by their undersigned attorneys, and amend their complaint heretofore filed in this cause in the following respects, to-wit:

A. Plaintiffs amend said complaint by adding to said complaint immediately after Paragraph 12 thereof, the following additional paragraph:

"13: (a) Since the filing of the original complaint in this cause, the Supreme Court of Florida has decided the case of George Andrews vs. the City of Winter Haven. The opinion of the Florida Supreme Court in said Andrews case was filed, to-wit, on September 13th, 1941, and is reported as Andrews vs. City of Winter Haven, Fla. 3 So. 2nd. 805. The defendants in this cause are now relying upon said Andrews suit as determinative of the matters involved in this suit.

"(b) Said Andrews suit was instituted in the Circuit Court of Polk County, Florida, by one George Andrews. The said George Andrews claimed, in said suit, to be the

holder of 100 City of Winter Haven General Refunding Bonds, Issue of 1933. Said George Andrews, in said suit, purportedly sought to have his rights as a bondholder determined and adjudicated with respect to the payment of deferred interest, in the event said bonds should be called, and with respect to the effectiveness of any call which might be attempted without payment of deferred interest according to the terms of said bonds. However, no copy of the resolution authorizing the issuance of said City of Winter Haven General Refunding Bonds, Issue of 1933, was attached to the bill of complaint in said Andrews suit, and said resolution was not pleaded or referred to therein, and the terms and provisions of said resolution were not brought before the Court by the pleadings or briefs in said Andrews suit, and so the plaintiffs say that the bond contract was not fully submitted to the said Circuit Court or to the Supreme Court of Florida. The said George Andrews, in the bill of complaint filed in said suit, described himself, in paragraph numbered 1 thereof, as a substantial creditor of the City of Winter Haven and as a member of the refunding agency authorized to be created in and by a certain refunding contract dated the 16th day of May, 1933. A copy of said refunding contract was attached to said bill of complaint and made a part thereof as Exhibit 'A'. Said Exhibit 'A' recites that 'the refunding plan has been carefully considered by a citizens' committee composed of substantial taxpayers or representatives of substantial taxpayers, which committee is as follows: Percival Manchester, J. A. Dugger, W. H. Anderson, Arthur Klemm, George B. Aycrigg, George Andrews and A. M. Tiiden,' and that 'the citizens' committee has recommended the program and indorsed the same.' The George Andrews mentioned in said Exhibit 'A' is the same George Andrews as is referred to in said Andrews suit. In truth and in fact, the said George Andrews was and still is a substantial property owner and taxpayer in the said City of Winter Haven, and owns real estate in said City of

Winter Haven assessed at a valuation of more than \$100,000.00 for taxation purposes by the said City of Winter Haven. Said George Andrews is also the owner of personal property subject to taxation by the said City of Winter Haven. Said George Andrews, in his capacity as trustee, is the owner of other taxable real property in the said City of Winter Haven. Plaintiffs respectfully charge and aver that the interest of the said George Andrews, as an owner of property subject to taxation by the said City of Winter Haven, is greater than his interest as the owner of the said 100 City of Winter Haven General Refunding Bonds, Issue of 1933. The bill of complaint in said Andrews suit consists of 8 typewritten pages, exclusive of the exhibits therein referred to, and said exhibits consist of 17 pages. Said bill of complaint was filed on the 23rd day of June, A. D. 1941 and the indorsements thereon so show. No summons or process of any kind was issued or served upon the said City of Winter Haven in said Andrews suit. On the contrary thereof, the said City of Winter Haven filed its answer to said bill of complaint on the very day upon which said bill of complaint was filed and the indorsements upon said answer so show. Said answer consists of 7 typewritten pages and it is apparent that said bill of complaint must have been submitted to the City of Winter Haven, or its counsel, well in advance of the filing thereof, so as to permit the filing of said answer upon the same day that the bill of complaint was filed. On the day of the filing of said bill of complaint, to-wit, the 23rd day of June, A. D. 1941, the said George Andrews, through his counsel, filed a motion for a decree upon the bill of complaint and the answer thereto. So, it is apparent that the answer of the City of Winter Haven to said bill of complaint must have been prepared and submitted to the said George Andrews, or his counsel, well in advance of the filing of said bill of complaint or of said answer. Said motion for a decree on bill and answer was submitted to one of the judges

of the Circuit Court in and for Polk County, Florida, at Lakeland, Florida, on the 23rd day of June, A. D. 1941, the very day upon which said bill of complaint and said answer and said motion were filed. An order entitled 'Order Granting Motion for Decree on Bill and Answer' was signed by the said Circuit Judge, in the City of Lakeland, Florida, on the morning of the 23rd day of June, A. D. 1941, the very day upon which said bill of complaint and said answer and said motion were filed. Said order consists of 7 typewritten pages, and purports to discuss and determine 6 separate questions of law, including constitutional questions, and cites decisions of the Supreme Court of Florida in reference thereto. Said questions were somewhat intricate and involved a consideration of the documents exhibited with the pleadings and a consideration of the constitution and statutes of the State of Florida and the ~~decisions of the Florida Supreme Court.~~ ~~Said~~ questions, could not have been thoroughly presented, argued and considered, in the time consumed in said hearing, as fully appears from the fact that, although said order was signed in the City of Lakeland, Florida, on the 23rd day of June, A. D. 1941, said order was filed for record, in the office of the Clerk of the Circuit Court of Polk County Florida, in the City of Bartow, Florida, some 12 or 15 miles from the said City of Lakeland, Florida, at the hour of 10:50 o'clock in the forenoon, as appears from the certificate of the Clerk of the Circuit Court indorsed upon said order. It therefore appears that said order must necessarily have been prepared well in advance of the hearing of said motion, and prior to the filing of either the bill of complaint or the answer, and said order shows on its face that it was prepared by someone familiar with the contents of both the bill of complaint and the answer. By reason of the foregoing facts, plaintiffs respectfully charge and aver that said Andrews suit was not instituted for the purpose of protecting the rights of the said George Andrews in his capacity as a bondholder, or those of any

bondholder, but rather for the purpose of obtaining a decree favorable to the said George Andrews in his capacity as the owner of property taxable by the said City of Winter Haven, and adverse to the interests of the bondholders of the said City of Winter Haven, and that, because of the haste with which said litigation was conducted, it was impossible for any other bondholder of the said City of Winter Haven to have learned of said suit and to have intervened therein. Plaintiffs therefore aver that said Andrews suit was not a bona fide law suit, and is not binding upon any bondholder except the said George Andrews, and that the same is not entitled to be regarded as a judicial precedent nor as a determination of any question by the State Courts of Florida. A complete certified copy and transcript of the record of the proceedings in the said Andrews suit, in the Circuit Court of Polk County, Florida, including photostatic copies of all papers filed in said Andrews suit, together with the indorsements upon said respective papers, is hereto attached, marked Exhibit E, and hereby made a part hereof.

"(c) The brief filed on behalf of the said George Andrews, in the Supreme Court of Florida, in said Andrews suit, makes no reference to the cases of *Sullivan vs. City of Tampa*, 101 Fla. 298, 134 So. 211, and *State vs. Special Tax School District No. 5 of Dade County*, 107 Fla. 93, 144 So. 356, both of which cases were decided prior to the issuance of the Winter Haven General Refunding Bonds of 1935, and both of which cases squarely held to an interpretation and construction of Section 6, Article IX, of the Florida Constitution, as amended in 1930, which is in absolute conflict with the opinion of the Supreme Court of Florida in said Andrews suit, in so far as the question involved in this suit is concerned. Said brief filed on behalf of George Andrews, in the Supreme Court of Florida, in said Andrews suit, makes no reference to the cases of *Bay County vs. State*, 116 Fla. 656, 157 So. 1, and *State vs.*

Citrus County, 116 Fla. 676, 157 So. 4, re-affirming the holding in the Sullivan case, and makes no reference to the case of State vs. City of Miami, 116 Fla. 517, 157 So. 13, all of which cases were decided in September, 1934, at about the time that said City of Winter Haven General Refunding Bonds of 1933 were being issued and circulated, and all of which cases were entirely consistent with and paved the way for the decision of the Supreme Court of Florida in the case of State vs. Sarasota County, 118 Fla. 629, 159 So. 797, in which case, on March 4th, 1935, the Florida Supreme Court held that deferred interest provisions in callable refunding bonds issued to refund outstanding non-callable bonds were not in violation of the constitutional amendment above referred to. Although the rules of the Supreme Court of Florida, in force at the time of the pendency of said Andrews suit, contemplated the filing of a reply brief by the said George Andrews, the appellant in said Andrews suit, no such reply brief was filed, and the brief filed on behalf of the appellee, the City of Winter Haven, in said Andrews suit, was permitted to go unanswered. The said brief that was filed on behalf of the said George Andrews, as aforesaid, shows that no effort was made on behalf of the said George Andrews to invoke the principle that the law to be applied in considering a contract is the law which existed at the time when the contract was made, which doctrine was announced by the Supreme Court of the United States in the case of *Celpecke vs. Dubuque*, 1 Wall. (U. S.) 175, and adopted by the Supreme Court of Florida in the case of *Columbia County Commissioners vs. King*, 13 Fla. 451; and re-affirmed by the Supreme Court of Florida in a number of its subsequent decisions. No effort whatever was made in the said brief of the said George Andrews to call to the attention of the Supreme Court of Florida its earlier decisions upon which the takers of the City of Winter Haven General Refunding Bonds of 1933 relied in accepting said bonds.

"(d) No reference is made in either the pleadings or the briefs in said Andrews suit to the provision of the resolution authorizing said City of Winter Haven General Refunding Bonds, Issue of 1933, to the effect

"That if any clause, section, paragraph or provision of this resolution or of the General Refunding Bonds hereby authorized be declared unenforceable by any Court of final jurisdiction, it shall not affect or invalidate any remainder thereof, and if any of the bonds hereby authorized be adjudged illegal or unenforceable in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment."

And neither the Supreme Court of Florida nor the Circuit Court of Polk County, Florida, in said Andrews suit, gave any consideration whatever to said provision or made any determination of the right of a bondholder to assume the position of a holder of a like amount of the original indebtedness refunded and enforce his claim for payment as such."

(e) Plaintiffs do not own any property subject to taxation by the City of Winter Haven.

B. Plaintiffs further amend said complaint by eliminating subdivision numbered 2 of that portion of said complaint beginning with the words "Wherefore, plaintiffs demand:", and substituting in lieu thereof the following:

"2. That this Court will declare that as to the City of Winter Haven, Florida, General Refunding Bonds, Issue of 1933, dated April 1, 1933, owned and held by Plaintiffs, the said City has the right to call said bonds on the following basis only:

"(a) If said bonds are called for payment on or before April 1, 1943, then said call shall be effective only if said City makes available funds for the payment of the principal of said bonds, plus the accrued interest thereon at the rate then prevailing as enforceable and collectible, plus one-half of the deferred or accumulated interest for ten years.

"(b) If said bonds are called for payment after April 1, 1943, but on or before April 1, 1953, then said call shall be effective only if said City makes available funds for the payment of the principal of said bonds, plus the accrued interest thereon at the rate then prevailing as enforceable and collectible, plus three-fourths of the deferred or accumulated interest (all of said deferred interest having accrued on April 1, 1943); Provided, however, that during this period no call for payment of said bonds whose maturity is less than two (2) years removed shall be effective unless said City makes available funds for the payment of the principal of said Bonds, plus the accrued interest thereon at the rate then prevailing as enforceable and collectible, plus the full amount of the deferred or accumulated interest.

"(c) If said bonds are called for payment after April 1, 1953, then said call shall be effective only if said City makes available funds for the payment of the principal of said bonds, plus accrued interest at the rate then prevailing as enforceable and collectible, plus the full amount of the deferred or accumulated interest."

HULL, LANDIS & WHITE
HAIR,

D. C. HULL,

Attorneys for Plaintiffs.

Address: DeLand, Florida

EXHIBIT E.

In the Circuit Court, in and for Polk County, Florida, In
Chancery.

No. 21,910-37-207.

George Andrews, Plaintiff,

vs.

City of Winter Haven, a municipal corporation of the
County of Polk and State of Florida, Defendant.

Transcript of Record.

On the 23rd day of June, A. D. 1941, the Bill of Com-
plaint was filed, in the words and figures following:

In the Circuit Court Tenth Judicial Circuit in and for
Polk County, Florida. In Chancery. No. 21910-37-207.
George Andrews, Plaintiff, vs. City of Winter Haven, a
municipal corporation of the County of Polk, and State of
Florida, Defendant. Bill of Complaint, Filed June 23, 1941.
H. C. Pelleway, Judge. Filed in this Office Jun. 23, 1941.
D. H. Sloan, Jr., Clerk Circuit Court, H. C. Crittenden,
Attorney at Law 311-12 Beymer Building, Winter Haven,
Florida, For Plaintiff.

BILL OF COMPLAINT.

In the Circuit Court Tenth Judicial Circuit in and for
Polk County, Florida. In Chancery.

George Andrews, Plaintiff,

vs.

City of Winter Haven, a municipal corporation of the
County of Polk, and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

Now comes George Andrews, Plaintiff, of Winter Haven, Polk County, Florida, and brings this his Bill of Complaint against the City of Winter Haven, a municipal corporation, of the County of Polk and State of Florida, Defendant, and for grounds of complaint says:

1. That the Plaintiff is the owner and holder for value of 100 refunding bonds of the said City of Winter Haven, Florida, issue of 1933, and is a member of the Winter Haven, Florida, Refunding Agency authorized to be created and designated as the exclusive refunding agency of said City under the terms of that certain contract made and entered into by and between the City of Winter Haven, Florida, and certain creditors of said City, dated the 16th day of May, 1933; and wherein and whereby it was contracted and agreed that the committee or agency so created to consist of three or more substantial creditors of said City, would exchange and refund the then outstanding bond indebtedness of said City for the considerations and upon the terms therein stated. A copy of said contract is hereby attached, marked Exhibit A to this Bill of Complaint and made a part hereof by reference. That said refunding agency, as fiscal agent of said City, fully performed the obligations imposed by said contract by supervising the validation of the refunding bonds of said City

issue of 1933, and procuring the owners of a large percentage of original bonds of said City to exchange such original bonds for bonds of the refunding issue of 1933.

2. That on the 7th day of October, 1940, the said City of Winter Haven entered into a new contract with Leedy, Wheeler and Company, a corporation, of Orlando, Florida, and Clyde C. Pierce Corporation, a corporation of Jacksonville, Florida, wherein and whereby the said latter named corporations were appointed fiscal agents of said City of Winter Haven to refund and exchange the outstanding bond indebtedness of the Defendant at a lower rate of interest than borne by the bonds of the refunding issue of 1933 of said City, part of which are held by your plaintiff. A copy of said contract is hereto attached, marked Exhibit B, to this bill and made a part hereof by reference; that although said contract called for the issuance of approximately \$2,100,000.00 of refunding bonds, the authorizing resolution passed by the City Commission of said City, provides for the issuance of \$2,150,000.00 of new refunding bonds, and \$2,150,000.00 of new refunding bonds have been validated by Court decree for the purposes of exchange or sale. That although said fiscal agents contracted and agreed with said City that on or before 18 months after validation of the new refunding bonds by a Court of competent jurisdiction, to furnish funds to said City by purchase of new bonds, to call all old unexchanged bonds of said City, at par of principal and accrued interest, except that portion of interest accrued under a deferred interest coupon attached to each of said bonds of the refunding issue of 1933, as aforesaid, one of which coupon is in words and figures as follows, to-wit:

"No. 61

\$145.00

On the First Day of April, 1963 the City of Winter Haven, Polk County, Florida, will pay to bearer at The

Central Hanover Bank and Trust Company of New York City, in the City of New York, New York, the sum of One hundred forty-five and no-100 Dollars (\$145.00) being the then enforceable, collectible and deferred interest on its City of Winter Haven General Refunding Bond Issue of 1933, Series "A", dated April 1, 1933, unless said bond shall have been theretofore called for redemption.

No. 702.

O. P. WARREN,

Mayor-Commissioner.

JOHN C. TERWILLIGER,

City Auditor-Clerk.

Said contract makes no provision whatever for the retirement or payment of said deferred interest coupon, although under the terms of the 1933 refunding contract aforementioned and the terms of the several refunding bonds issue of 1933, there is accrued interest, evidenced by said deferred coupon upon each \$1,000.00 bond of said issue, in the sum of \$77.50, if said bond to which such coupon is attached is called on or before April 1, 1943; that a copy of one of the bonds of the refunding issue of 1933 is hereto attached, marked Exhibit C to this Bill and made a part hereof by reference.

3. That after the execution of the new contract with the new fiscal agents of said City, said City of Winter Haven levied for outstanding bonds of said City of the refunding issue of 1933, for the fiscal year 1940-41, only 15 mills on the dollar of assessed value upon all taxable property in said City as established by Chapter 11301, Acts of Florida, 1925; that although the debt service levy for the fiscal year 1940-41 of said City was made solely for the refunding bonds, issue of 1933, and by the terms of the refunding contract of 1933, aforementioned, said City is pledged to use all surplus funds levied for debt servicing

the bonds, refunding issue of 1933, above interest requirements, in the purchase or call of the bonds, issue of 1933, said City, without making any provision whatever for interest not represented by the deferred coupon accruing on bonds issue of 1933, due in October 1941, many of which may and probably will be unexchanged, and being without sufficient funds to retire such accruing interest, if the fund on hand is diverted to any other purpose, has advised the Plaintiff that said City intends to pay accrued interest on refunding bonds, issue of January 1, 1941, of said City, which will mature July 1, 1941, from debt service funds on hand and accruing from levies for the bond refunding issue of 1933; that taxes levied for each year do not become due and payable under the Charter of said City until November 1st of each year and said City has no way of raising funds to meet interest due October 1, 1941, on bonds of the refunding issue of 1933, of said City, without taking into consideration interest due on the deferred interest coupon attached to each of said bonds and accrued and retirable under the terms of the 1933 refunding contract, aforementioned; and the terms of the 1933 bonds themselves, should said bonds be called as contemplated by said City.

4. That under the terms of the 1933 contract between the Winter Haven Refunding Agency and said City, of which this Plaintiff was a member, as aforesaid, the City of Winter Haven is required to levy for refunding bonds of said City issue of 1933, the sum of \$120,000.00 annually, solely for the payment of accruing interest upon and the purchase or retirement of bonds of said issue as said bonds shall severally mature; that said City has advised your Plaintiff, by and through its City Attorney, that during the fiscal year 1941-42 of said City, said City proposes to levy a tax only for the payment of interest and to create a sinking fund to pay the refunding bonds, issue of January 1, 1941, and thereafter, during each succeeding fiscal year.

to levy a tax only, to create a fund for the payment of interest and principal of such new refunding bonds, and intends to make no provision, whatever, for the refunding bonds issue of 1933 of said City, unexchanged at such time; all this Plaintiff is advised and believes and, therefore, charges is in violation of the terms of the refunding contract of 1933, in this, no provision is made for retirement or payment of interest represented by the deferred coupons attached to each of the refunding bonds issue of 1933 on call of such 1933 bonds.

5. That Plaintiff is advised and believes and therefore states that said deferred interest coupon attached to each refunding bond of said City issue of 1933, is valid, and a binding obligation of said City of Winter Haven, and by the terms of the refunding contract of 1933 and the very terms of the bonds said coupons must be paid at 50% of the face amount thereof, if the bonds are called before April 1, 1943, and must be paid thereafter at a higher percentage.

6. That so long as any of the refunding bonds, issue of 1933, remain outstanding and uncalled, your Plaintiff is advised and believes and therefore charges, that said City under the provisions of the 1933 refunding contract aforementioned, is required to levy \$120,000.00 yearly, and to use the proceeds when collected solely and exclusively: first, to pay interest due and accruing on the refunding bonds, issue of 1933; and, second, any surplus thereof to advertise for bids, and to purchase at the best price obtainable, bonds of said City of the issue of 1933 or to call said bonds at par and accrued interest including interest represented by the deferred coupon, until such bonds begin to mature in 1948; that any diversion of funds collected from prior levies to pay interest upon and bonds of the issue of 1933, or any failure of said City henceforth to levy \$120,000.00 annually to service exclusively said refunding

bonds, issue of 1933, so long as any of said bonds remain unretired, will constitute a violation of the 1933 refunding contract, aforementioned.

7. That your Plaintiff is advised and believes and therefore says upon information and belief, that the issues presented by the foregoing allegations vitally affect the value of this Plaintiff's presently held City of Winter Haven bonds, and under the declaratory judgment or decree Statute of this State this Plaintiff is entitled to invoke the jurisdiction of this Honorable Court for the purpose of having the Court enter its declaratory decree adjudicating and determining the hereafter stated questions before the rights of this Plaintiff are invaded by the threatened action of said City, as aforesaid, and as an act of preventive justice before irreparable damage is done this Plaintiff.

8. That the said City should be enjoined from paying from funds on hand from tax collections levied to pay out, standing bonds, any interest on bonds of the refunding issue of January 1, 1941, if any be exchanged on or before July 1, 1941, pending determination by this Court by Declaratory Decree, of the validity of the deferred interest coupons attached to each of the bonds of the issue of 1933; and should this Court find that said deferred interest coupon is valid, that said City should be enjoined and restrained permanently by this Court from paying any interest upon the bonds of the issue of January 1, 1941, from tax collections from levies made heretofore for bonds of said City issue of 1933 until every said bond of the issue of 1933 shall have been purchased pursuant to provisions of the 1933 refunding contract, or called pursuant to its provisions including provision for payment of the deferred interest coupon, or retired at maturity, with full payment of said deferred coupon according to the tenor of said bonds and the contract aforementioned; that said City should be mandatorily required to levy, so long as any of the bonds

of said City, issue of 1933, are unretired, or so long as provision has not been made on the call of said bonds, for payment of the deferred interest coupon according to the tenor of the 1933 bonds and the 1933 contract, a millage sufficient to produce the sum of \$120,000.00 annually, to pay interest and create a sinking fund to retire the 1933 bonds according to the 1933 contract.

Wherefore Plaintiff Prays:

a. That the Court find that it has jurisdiction of this cause and the parties and is empowered by Statute to enter declaratory decree herein.

b. That the Court adjudicate and determine the following questions, viz:

1. Is the deferred interest coupon attached to each of the refunding bonds of the City of Winter Haven, issue of 1933, valid or invalid?

2. Under the refunding contract of 1933, will a tender by the City on call of principal, plus accrued interest of the refunding bonds issue of 1933, less and except accrued interest represented by the deferred interest coupons attached to the 1933 bonds, toll the running of interest on the refunding bonds, issue of 1933? And will the holder of bonds of the issue of 1933, be required to accept such tender without receiving in addition thereto the amount stipulated as payable on call in payment of the deferred interest coupon?

3. May the City pay interest on City of Winter Haven refunding bonds, issue of January 1, 1941, accruing July 1, 1941, from proceeds of tax collections from the general levies for debt service for the fiscal year 1940-41 of said City, and prior years since 1933, where such levies were

made solely for the refunding bonds issue of 1933? And would such payment impair the contract right of this Plaintiff to have all funds collected from levies made for the 1933 bonds applied solely to the retirement of the interest and principal of said bonds so long as any of such bonds remain outstanding; or will the 1941 refunding bonds, when exchanged, be a mere continuation of the debt evidenced by the 1933 bonds in a new form, so as to justify payment of interest thereon from proceeds of levies made for the 1933 bonds?

4. May the City of Winter Haven be commanded and required by mandatory injunction to levy hereafter, so long as any refunding bonds of said City of the issue of 1933 remain outstanding, (and whether part of said bonds be exchanged for the new refunding bonds, issue of January 1, 1941, or not,) a tax against taxable property in said City of Winter Haven, sufficient to produce the sum of \$120,000.00 annually, solely and exclusively for the refunding bonds issue of 1933?

5. May this Court enjoin the payment of interest on the January 1, 1941, issue of refunding bonds of the City of Winter Haven, accruing July 1, 1941, from funds collected from levies made solely for the refunding bonds of said City issue of 1933?

6. If said deferred interest coupon attached to the refunding bonds, issue of 1933, be found to be invalid by the Court, will such invalidity invalidate the call provision in the 1933 refunding contract, and in the refunding bonds of 1933, so as to vitiate the call feature altogether in said 1933 contract and bonds, or is such deferred coupon such a severable or separable portion of such contract of 1933 and the bonds of the issue of 1933, so as to be treated as elided and eliminated therefrom without affecting other

provisions of the contract and bonds of 1933, including the call provision in such contract and bonds?

c. That said Defendant, the City of Winter Haven, be commanded to refrain and desist from paying or directing any of its officers and agents to pay interest accruing July 1, 1941, or thereafter on any bonds of the issue of refunding bonds of said City, dated January 1, 1941, pendente lite; and upon final hearing hereof that said City, its officers and agents, be commanded and enjoined to refrain and desist permanently from paying accruing interest on said bonds, issue of January 1, 1941, from funds accruing from levies for the issue of 1933 bonds of said City heretofore made; and that said City, its officials and agents, be mandatorily commanded to henceforth pay all proceeds from debt service levies heretofore made for the 1933 bonds, aforesaid, solely upon interest of said bonds, and utilize any surplus thereof in the retirement of the principal of said bonds by advertisement and purchase, or payment at a call date or at maturity, so long as any of said issue of 1933 remain outstanding and unretired, according to the tenor and provisions of said bonds and the 1933 refunding contract; and that said City, its officers and agents, be mandatorily required by order of this Court, to hereafter, levy each year upon all taxable property in said City, millage sufficient to produce the sum of \$120,000.00 annually, and to apply said proceeds, when collected, solely and exclusively to the payment of the refunding bonds of said City of Winter Haven issue of 1933, so long as any of said bonds remain outstanding.

And your Plaintiff will ever pray.

H. C. CRITTENDEN,

W. H. HAMILTON,

Solicitors for Plaintiff.

EXHIBIT "A"

Memorandum of Agreement.

Whereas, certain creditors of the City of Winter Haven, Florida, a municipal corporation located in Polk County, have submitted to the City Commission of said City a program for refinancing all of the outstanding indebtedness of the City represented by bonds and interest coupons; and

Whereas, the City Commission of the City of Winter Haven, after due consideration of the program as outlined by certain creditors of the City, consider said plan to be a feasible and expedient plan under the circumstances and conditions as they exist; and

Whereas, it is the desire of the City Commission of the City of Winter Haven, Florida, to effectuate a refinancing plan that will lend immediate relief to the taxpayers of the City and afford the City an opportunity to retire its outstanding bonded indebtedness without the necessity of partial refunding operations from time to time; and

Whereas, the refunding plan has been carefully considered by a citizens' committee composed of substantial taxpayers or representatives of substantial taxpayers, which committee is as follows: Percival Manchester, J. A. Dugger, W. H. Anderson, Arthur Klemm, George B. Ayerigg, George Andrews and A. M. Tilden; and

Whereas, the citizens' committee has recommended the program and indorsed the same; and

Whereas, the refinancing plan has submitted by certain creditors of the City seeks to accomplish the purpose desired by the City Commission;

Now, Therefore, This Indenture Witnesseth: That the City of Winter Haven, Florida (hereinafter at all times referred to as "party of the first part"), by and through its City Commission, and the creditors of the City of Winter Haven, Florida, who are a party to this agreement, as indicated by their signatures hereinafter appearing (and hereinafter at all times referred to as "party of the second part"), for and in consideration of the sum of One Hundred (\$100.00) Dollars, paid by each of said parties to each of the other, and for the further consideration of the mutual benefits flowing to the parties to this agreement and to all others similarly situated, do hereby mutually covenant and agree to and with each other, as follows, to-wit:

1. It is mutually understood and agreed between the parties hereto that the party of the second part does hereby agree to create a Refunding Agency to be known as "Winter Haven, Florida, Refunding Agency," (hereinafter at all times referred to as "Refunding Agency") which shall be composed of three or more substantial individual creditors of the City of Winter Haven, Florida, who shall be subject to the approval of the party of the first part.

That the Refunding Agency herein authorized to be created and established shall have exclusive authority to act in the carrying out of the refinancing plans outlined and provided for in this memorandum of agreement, unless and until otherwise mutually agreed upon by the parties hereto.

That such authority shall always be confined and limited to the following terms and conditions, viz:

2. It is further mutually understood and agreed between the parties hereto that the indebtedness of the City of Winter Haven, Florida, to be included and embraced with-

in the terms and conditions of this memorandum of agreement is approximately as follows:

Date of Issue	Amount Outstanding	Designation	Interest Rate
5 11 22	\$ 50,000.00	Sewerage	6%
5 11 22	87,000.00	Street Paving	6%
5 11 22	7,000.00	White Way	6%
5 11 22	30,000.00	City Hall	6%
3 1 23	4,775.09	Improvement	6%
4 1 23	3,239.54	Improvement	6%
6 1 23	7,404.38	Improvement	6%
8 1 23	7,247.36	Improvement	6%
7 1 25	39,000.00	Funding	5 1/2%
5 1 26	340,000.00	Paving, Series B	6%
10 1 26	166,000.00	Paving, Series C	6%
11 1 26	103,000.00	Paving, Series A	6%
2 1 27	23,000.00	Paving, Series D	6%
5 1 27	77,000.00	Refunding, Series A	6%
6 1 27	273,000.00	Capital Fund Improvement	6%
4 1 28	78,000.00	Refunding, Series B	5 1/2%
9 1 23	62,000.00	Refunding, Series C	5 1/2%
4 15 29	87,000.00	Refunding, Series D	6%
9 15 29	49,000.00	Refunding, Series E	6%
4 15 30	127,000.00	Refunding, Series F	6%
9 15 30	65,000.00	Refunding, Series G	6%
4 15 31	97,000.00	Refunding, Series H	6%
4 15 31	6,000.00	Refunding, Series I-1	5 1/2%
5 1 31	61,000.00	Refunding, Series I-2	6%
6 1 31	29,000.00	Refunding, Series I-3	6%
10 1 31	56,000.00	Refunding, Series I-5	6%
11 10 31	33,000.00	Refunding, Series I-6	6%
2 1 32	4,000.00	Refunding, Series I-7	6%
3 1 32	1,000.00	Refunding, Series I-8	6%
4 15 32	2,000.00	Refunding, Series I-9	6%
Total	\$1,974,666.37		

3. It is further mutually understood and agreed between the parties hereto that the party of the first part hereby agrees to authorize by appropriate resolution or ordinance, or other necessary formal action, the issuance of approximately Two Million (\$2,000,000.00) Dollars in refunding bonds of the City of Winter Haven, Florida, to be known as "General Refunding Bonds, Issue of 1933," and upon the issuance of such bonds and the approval of same by reputable bond counsel, hereinafter referred to, said party of the first part hereby agrees to execute said bonds and deposit same in escrow with the Bank, located in the City of for delivery and exchange under the sponsorship and direction of the Refunding Agency to the holders of the securities of the City now outstanding and specifically referred to in the schedule of indebtedness set out above.

4. It is further mutually understood and agreed between the parties hereto that said refunding bonds shall be dated April 1, 1933; and shall mature so as to provide that each maturity of the presently outstanding bonds shall be exchanged for refunding bonds maturing on April 1st of the year nearest to fifteen (15) years from the maturity of such of the presently outstanding bonds as are exchanged therefor, it being intended that each refunding bond shall retain relatively the same position in the debt structure of the City of Winter Haven as the presently outstanding bonds exchanged therefor provided, however, that no maturities of the refunding bonds shall extend over thirty (30) years from date of issue; and provided further, that all maturities of April 1, 1933, and prior thereto, whether of principal or interest, shall be exchanged for refunding bonds of the City of Winter Haven maturing on April 1, 1948.

5. It is further mutually understood and agreed between the parties hereto that as and when the presently outstanding bonds of the City of Winter Haven, Florida, are surrendered to the escrow agent, the holders thereof shall be entitled to receive in exchange therefor a like principal amount of refunding bonds. At the time of such exchange the accrued interest on the bonds so exchanged shall be adjusted as of April 1, 1933, and in such adjustment the holders of interest coupons and the holders of matured bonds entitled to accrued interest thereon which is not evidenced by interest coupons, shall be entitled to receive a like principal amount of bonds for such interest coupons and accrued interest which is not evidenced by interest coupons, on a par basis of exchange, less such payments in cash on interest as may be made at the time of the exchange. In the issuance of the refunding bonds herein provided for, it is agreed that adequate provision will be made to effect an adjustment of past due and accrued interest on the securities to be refunded, and that at the time of the exchange of the refunding bonds for the bonds for the presently outstanding bonds an adjustment of accrued interest will be made which shall be satisfactory to the parties hereto, party of the first part agreeing to use all available cash in the interest and sinking fund for such purpose.

6. It is further mutually understood and agreed between the parties hereto that all refunding bonds herein authorized shall bear interest, payable semi-annually, at the following rates: Three and one-half per cent. ($3\frac{1}{2}\%$) per annum for the first two years from the date of the bonds; four per cent. (4%) per annum for the next succeeding year; four and one-half per cent. ($4\frac{1}{2}\%$) per annum for the next succeeding year; five per cent. (5%) per annum for the next six years; and six per cent. (6%) per annum after ten years from the date of the bonds, until the maturity of the bonds. Provided Always that no refund-

ing bond herein provided for shall bear interest at a rate greater than the rate of interest borne by the bond for which such refunding bond is exchanged.

That each bond shall have attached thereto a non-interest bearing, non-detachable certificate or coupon representing the difference, from the date of the refunding bonds to the date of maturity, between the rate of interest on the presently outstanding bonds and the rate of interest earned on the refunding bonds exchanged for the presently outstanding bonds of the City (which earned interest is hereinafter at all times referred to as "deferred interest.")

That all of said refunding bonds shall be callable at par, plus accrued interest, plus one-half of the deferred interest, upon any interest payment date on or prior to ten years from the date of the bonds; and shall be callable at par, plus accrued interest, plus three-fourths of the deferred interest, on or prior to two years before the maturity of the respective bonds, during the second ten-year term of the bonds; and shall be callable at par, plus accrued interest, plus the full deferred interest during the last ten years of the thirty-year term of the bonds; provided, that at the respective dates of maturity all bonds shall be payable at par, plus the full deferred interest.

That the option to call bonds of this issue prior to maturity, if used, shall be exercised in the following manner:

The bonds to be called shall be drawn by lot from the next succeeding definite maturity, and notice of such redemption, specifying the bonds to be redeemed, shall be filed at the place of payment of the principal and interest of said bonds at least thirty (30) days prior to such redemption day, and notice of intention to redeem said bonds shall be published at least once in at least two newspapers of general circulation, one of which newspapers

shall be printed and published in Winter Haven, Florida, and the other in the City of New York, New York.

7. It is further mutually understood and agreed between the parties hereto that for the purpose of adequately providing for the payment of the interest coupons and for the creation and maintenance of a sinking fund for the retirement of all said refunding bonds, the proceedings authorizing the issuance of said refunding bonds shall conform to the tax provision requirements of such laws of Florida providing for the refunding of indebtedness as shall be approved by the attorneys who pass upon the validity of the refunding bonds to be issued.

That such proceedings authorizing the issuance of the refunding bonds shall contain enforceable and effective obligations and covenants on the part of the party of the first part to and in favor of the holders of the refunding bonds, that in the annual budget and ad valorem tax levy to be prepared and made in each of the years A. D. 1933 to A. D. 1963 inclusive, there shall be included a levy of an ad valorem tax upon all the taxable property in the City in an amount to aggregate annually not less than the amounts shown opposite the respective years in the following schedule:

Year	Amount of Levy
1933 to 1934, both inclusive	\$105,000.00
1935	110,000.00
1936	115,000.00
1937 to 1963, both inclusive	120,000.00

That such tax shall be levied and computed upon the extended and finally equalized valuation of all the taxable property of the City of Winter Haven, Florida, provided, however, that the party of the first part hereby reserves the right to reduce said annual levies set out in the

schedule above by the equivalent of six per cent (6%) on the principal amount of any bonds retired, from any source other than from the proceeds of said above described annual pledges, after the execution of this contract; provided, further, however, that such reductions from the specified tax levies shall not be effective during the first four years of the terms of the refunding bonds, except as to any retirement of the present principal indebtedness of the party of the first part from the designated sources, from the date of this contract to the date of preparing the budget in the years indicated, above the amounts shown in the following schedule:

Year	Total Retirement Before Reduction in Levies Effective
1933	\$250,000.00
1934	250,000.00
1935	167,000.00
1936	84,000.00

• (Example: If the City has retired \$167,000.00 of bonds of the City before adopting the annual budget in 1935 from sources other than the proceeds of the special tax levies to support the refunding bonds, as hereinafter described, taking into consideration accumulated retirements from the date of this contract to the date of adopting the budget in 1935, then the City may reduce the annual tax from the contract figures of \$110,000.00 by the equivalent of 6% on an excess retirement over and above said \$167,000.00).

If during any year the City realizes in cash from revenues pledged to the interest and sinking fund under the provisions of this contract, a sum in excess of such annual interest and sinking fund pledges, then and in that event such excess over and above such pledges may, at the option of the City Commission, be used, according to the contract, for the purchase of additional bonds, or may be

carried over to the next succeeding budget and credited against the next year's requirements, and the tax levy reduced in a similar amount.

That the party of the first part, in determining the amount of millage to be levied for and during the first five (5) years of this program, may assume that the tax collections for each current year during such period will be one hundred percent. (100%); that for and during the remaining term of the refunding program, the party of the first part, in determining the amount of millage to be levied for each year, agrees to assume that the percentage of tax collections for the current year under consideration will not exceed the average percentage of collection of ad valorem taxes for the last past three tax collection years immediately preceding the tax year for which the levy is being made.

That the party of the first part further agrees to levy each year from the sixth to the tenth years of this program, inclusive, one-fifth of any amount less than the total of the first five years' levies which has actually been received from such levies and paid into the interest and sinking fund account of the issue of bonds provided for herein during the first five years of the program.

Provided, however, that at all times during this program, the party of the first part, in determining the levy to be made for the ensuing year's interest and sinking fund requirement, shall provide and make a sufficient levy to pay the interest and principal maturities of the year for which the budget and levy is being made and prepared.

Subject to the provisions of Section 15 hereof, it is agreed that any of such revenues and income, after interest and principal maturities for the current year have been provided for or set aside, shall be used to reimburse party

of the second part the expense of this refunding program. After such expense has been paid, all such revenues and income received, allocated, or made available, shall be considered as surplus and used exclusively for the purpose of retiring said bonds under the provisions of this agreement.

8. It is further mutually understood and agreed between the parties hereto that any and all revenues and income of the City now or hereafter derived from sources other than ad valorem taxes, and not otherwise specifically appropriated by law for other purposes (excluding revenue and income from special assessments, city owned real property, and present operating revenues from sources other than ad valorem taxes, or their future substitutes), shall be pledged to the payment of the refunding bonds herein authorized; and when such revenues and income are received, allocated, or made available, they shall be placed in the interest and sinking fund account for said refunding bonds and shall not be used or appropriated for any purpose other than in the payment of interest to accrue from time to time on said refunding bonds, and for the retirement of said refunding bonds as provided in this agreement; it being understood and agreed between the parties hereto that upon receipt of any such revenues and income from newly created sources and the application of the same as herein provided, such revenues and income shall be credited against the next ensuing budget requirement for the interest and sinking fund of the refunding bonds authorized herein, and the tax levy decreased accordingly.

That all cash receipts from the collection of delinquent taxes which were levied for interest or principal of the bonds to be refunded under this program, and all cash receipts now or hereafter collected from the special assessments heretofore made against property abutting public improvements and primarily pledged to retire the

interest and principal of certain of the bonds authorized to be refunded in this program, and the cash income and revenues now or hereafter received from real property of the party of the first part now or hereafter to be acquired, shall be and the same are hereby pledged to the payment of the interest and principal of the refunding bonds herein authorized, and upon the receipt of any of such funds from any of the sources hereinabove specifically referred to in this paragraph, such receipts shall be placed in the interest and sinking fund account for said refunding bonds herein authorized, and shall be used for the retirement of said interest and bonds under the provisions of this agreement, and shall supplement the annual tax levies provided for herein.

That the governing authority, for and on behalf of the party of the first part, will use its best efforts to enforce collections of all past due ad valorem taxes and special assessments as rapidly as possible, under such plan of operation as the governing authority of the party of the first part shall consider adequate, to the end that said past due ad valorem taxes and special assessments shall be liquidated as expeditiously as possible, considering the best interests of the party of the first part and its creditors.

9. It is further mutually understood and agreed by and between the parties hereto that if at any time there is a surplus of Five Thousand (\$5000.00) Dollars, or more, in the refunding interest and sinking fund account, such surplus shall be used by the governing authority of party of the first part for the purpose of purchasing refunding bonds of the issue contemplated herein, provided such purchases do not impair the ability of the City to meet the interest and principal payments as they become due, in the discretion of the governing body of party of the first part.

That purchases herein provided for shall be made in the following manner:

The governing authority of party of the first part shall designate a date which shall be not less than thirty nor more than sixty days from the time such date is designated, at which time the governing authority will receive sealed tenders of bonds of the refunding issue contemplated herein, and act upon such tenders in open session. Upon determining said date the governing authority shall notify the Refunding Agency and any bondholder so requesting. Notice of the time and place of receiving such tenders shall be published once, at least thirty days before said time, in at least two newspapers published and having a general circulation, one of which newspapers shall be published in Winter Haven, Florida, and the other in the City of New York, State of New York. The entire available surplus for the retirement of bonds shall be used to purchase bonds offered at the lowest prices; provided, however, that if the governing authority of party of the first part shall be dissatisfied with any or all tenders received, then it shall have the option of rejecting any or all such tenders, and within sixty days of such rejection it shall re-advertise for additional sealed tenders, and upon such second re-advertisement the governing authority shall accept bonds so tendered until all of the funds available shall have been used in the purchase thereof as provided in this paragraph; provided, further, however, that if no offers are received at or less than the then callable price, the governing authority shall reject all offers and proceed to call bonds by lot, as hereinabove set out; and provided, further, that during the first eight years of the operation of this program the party of the first part shall accept the lowest offerings, based on the par value, and thereafter the City shall have the option to accept the lowest offerings, based on the par value or based on the income yield to maturity, taking

into consideration the deferred interest value of the bonds if not redeemed prior to maturity.

10. It is further mutually understood and agreed between the parties hereto that for and during the term of the refunding bonds herein authorized, all ad valorem taxes shall be payable in cash only.

11. The party of the first part further agrees that if the annual budget of appropriations of party of the first part (except debt service requirements) is exceeded during any year while any of the refunding bonds herein authorized are outstanding and unpaid, that the general funds of the party of the first part will for such year be chargeable the next ensuing year with an amount equal to such excess expenditures, and such amount will be taken from the general fund and placed in the interest and sinking fund for the refunding bonds herein authorized, and will not be considered a part of the respective annual requirements hereinabove described.

12. The party of the first part hereby agrees to take all proceedings deemed to be necessary in carrying out the refinancing program herein authorized, to the end that the bonds to be issued will be general obligations of the City of Winter Haven, Florida, and contain a pledge of the full faith and credit of the City for the prompt payment of the principal and interest on said refunding bonds according to their tenor.

13. It is further mutually understood and agreed that if at any time before or after any or all of the refunding bonds shall have been authorized or issued, it shall be deemed advisable or necessary in the opinion of legal counsel that an Act or Acts of the Legislature of Florida should be enacted governing this program, or any part

hereof, the governing authority will support and request the enactment of any such law or laws.

14. Party of the second part hereby agrees to obtain from the Refunding Agency to be established, an agreement in favor of party of the first part in and by which said Refunding Agency agrees and obligates itself to defray all expenses in assembling the bonds proposed to be refunded and in the preparation of the refunding bonds, and in representation of party of the first part in the validation of said bonds and subsequent approval thereby by counsel. In obtaining legal representation for these purposes, party of the second part agrees that the Refunding Agency will engage the services of either Calwell and Raymond, bond attorneys of New York City, or Chapman and Cutler, bond attorneys of Chicago, Illinois, and Henry L. Joffay, City Attorney of Winter Haven, with Francis P. Whitehair, of Deland, Florida, as associate counsel, provided an agreement can be reached with these lawyers and the Refunding Agency as to their fees and compensation for such services to be performed by them in carrying out the purposes of this refunding program; but if, however, an agreement as to compensation and fees cannot be reached, then and in such event the Refunding Agency shall be entitled and privileged to engage other counsel to approve the refunding bonds and carry out the legal proceedings necessary with respect to this refunding program.

15. Said party of the first part hereby agrees to reimburse the Refunding Agency for its expenses incurred in carrying out this refunding program by paying to it two per cent. (2%) of the par value of all bonds exchanged hereunder from the first funds available to the City each year after interest for the current year has been provided for or set aside, until the two per cent (2%) herein agreed upon has been fully paid; provided that for the first three years of the program the amount to be paid to the Refund-

ing Agency to reimburse its expenses in carrying out this refunding program shall not exceed Thirteen Thousand Three Hundred and Thirty-three. (\$13,333.00) Dollars in any one year; and provided further that said Refunding Agency shall not charge or receive from any bondholder or other party any other or additional remuneration for its said services and expenses.

16. It is further mutually understood and agreed between the parties hereto that the Refunding Agency herein provided for shall determine whether or not it is feasible to effectuate the refinancing plan herein outlined should it be impossible to assemble all of the outstanding indebtedness particularly set forth above; provided, however, that party of the first part is in no wise obligated to perform under the terms of this agreement unless seventy-five per cent (75%) of the outstanding bonds hereinabove referred to have been assembled for the purpose of this agreement. In the event the Refunding Agency determines that it is not feasible to effectuate the refinancing plan herein outlined, then and in such event all expenses and costs incurred by the Refunding Agency in the assembling of the bonds, or the performance of any other of the conditions of this agreement shall be borne by the Refunding Agency, and party of the first part will in no wise be responsible or obligated to pay any of such costs and expenses; and the Refunding Agency, in its agreement to defray such expenses as herein provided, shall also consent to the obligations and conditions of this provision of the agreement.

17. It is further mutually understood and agreed between the parties hereto that the parties to this agreement will jointly use their best efforts in inducing present holders of the presently outstanding bonds of party of the first part to participate in the refinancing program; and, until otherwise mutually agreed between said parties, the plan as herein set forth shall constitute the exclusive refinanc-

ing program for said party of the first part. Whenever, and as often as the Refunding Agency shall request in writing to be informed as to the financial affairs of the party of the first part, such as the amount of tax levies, collections or delinquencies, the amount of outside revenues and income, the amount of bonds issued, outstanding or retired, or the status or amount of interest or sinking fund, the party of the first part agrees promptly to furnish such information and to give due consideration and credence to any recommendation of the Refunding Agency with regard to such financial affairs.

18. It is further mutually understood and agreed that after five (5) years from the date of this contract the Refunding Agency herein agreed to be created shall be dissolved and its power and authority shall cease and determine; provided, however, that if any portion of the two per cent. (2%) compensation herein provided for shall not have been paid at said time, then and in that event the Refunding Agency shall continue in existence for the purpose of collecting any such balance in accordance with the terms of this contract.

19. It is expressly agreed by the parties hereto that any act of the governing authority of party of the first part conflicting with any of the terms of this agreement done or performed under the order of any Court of competent jurisdiction, shall not be considered as a breach hereof, or of any of the terms hereof; provided, that if such order shall interfere with the reasonable operation of this contract, then the refunding agency shall have the option to refuse to proceed further in carrying out the program contemplated herein.

20. It is further agreed by the parties hereto that either party to this contract reserves the right to advise the other party at any time within thirty (30) days after the ad-

journalment of the 1933 regular session of the Legislature of the State of Florida, that such party does not care to proceed with its undertaking under the contract due to complications resulting exclusively from Legislative action.

In Witness Whereof, the party of the first part has caused this agreement to be executed in duplicate in its corporate name, under due corporate authority, by proper resolution, and to be signed by its Mayor-Commissioner and attested by its City Auditor and Clerk, with the corporate seal of party of the first part duly affixed; and the parties of the second part have duly executed this instrument under seal, as of this 16th day of May, A. D. 1933.

CITY OF WINTER HAVEN,
FLORIDA.

By O. P. WARREN,

(Seal)

Its Mayor-Commissioner, Party
of the first part.

(Seal)

R. E. CRUMMER,

(Seal)

GEORGE W. SIMMONS, JR.,

Parties of the second part.

Attest:

JOHN C. TERWILLIGER,

Its City Auditor and Clerk.

100

EXHIBIT "B"

Agreement

This Agreement made and entered into this 7th day of October, A. D. 1940, by and between Leedy, Wheeler & Co., a Florida corporation, and Clyde C. Pierce Corporation, a Florida corporation, (hereinafter sometimes referred to as "First Party" and sometimes referred to as "Fiscal Agent"), and the City of Winter Haven, Florida, a muni-

cipal corporation created and existing under the Constitution and laws of the State of Florida (hereinafter sometimes referred to as "Second Party" and sometimes referred to as "City").

Witnesseth:

In consideration of the sum of One (\$1.00) Dollar paid by each of the parties hereto to each other, the receipt of which is hereby mutually acknowledged, and in further consideration of the mutual benefits flowing to the respective parties hereto, it is hereby mutually understood and agreed:

Section I. That the First Party shall be appointed Fiscal Agent of said City and shall endeavor to accomplish a refunding, by an exchange of new One Thousand (\$1,000.00) Dollar refunding bonds for each One Thousand (\$1,000.00) Dollars of the City's indebtedness it is agreed to be funded. This shall amount to approximately Two Million One Hundred Thousand (\$2,100,000.00) Dollars, or such amount as shall be necessary to fund into bonded indebtedness all of the principal indebtedness now evidenced by bonds and judgments, and also such past due interest as may be determined to be necessary. It is the purpose of this section to provide for all of the financing contemplated and found to be necessary during the period of time covered by this contract.

Section II. That Second Party shall by proper action cause refunding bonds to be authorized and validated by the Circuit Court in and for Polk County, Florida, or the Supreme Court of Florida, in the event of any appeal, in an amount sufficient to bring an exchange of bonds on the basis of a One Thousand (\$1,000.00) Dollar bond for each One Thousand (\$1,000.00) Dollars of such indebtedness, using such procedure and forms therefor as shall be approved

by nationally recognized bond attorneys. Said refunding bonds shall be executed in the manner required by law and placed in deposit in escrow in a bank designated by the First Party to be delivered in exchange for said outstanding indebtedness contemplated by this contract, this contract being sufficient authority for said officials to make such deposits for the purpose above specified.

Section III. That said refunding bonds shall be dated as mutually agreed upon, in any event not later than January 1, 1941, and shall mature serially in amounts as may be permitted under an allocation not less than One Hundred Twenty-four Thousand (\$124,000.00) Dollars per annum and not to exceed One Hundred Twenty-six Thousand (\$126,000.00) Dollars per annum for both principal and interest. Interest shall be payable semi-annually and both principal and interest payable at a bank in New York City or at the option of the holder at the Florida National Bank of Jacksonville, Jacksonville, Florida, or at the office of the City Treasurer of the City of Winter Haven, Fla., and said bonds shall bear interest as follows: First maturing one-third (1/3) at four per centum (4%) per annum, next maturing one-third (1/3) at four and one-fourth per centum (4 1/4%) per annum, the last maturing one-third (1/3) at four and one-half (4 1/2%) per centum per annum, the last fifty (50%) per cent of said bonds shall be callable at par and accrued interest on or after the 1st day of July A. D. 1955, provided however, that the last maturing One Hundred Fifty Thousand (\$150,000.00) Dollars of said bonds shall be callable on any interest payment date upon thirty (30) days notice by publication in a financial journal published in New York City.

Section IV. First Party as Fiscal Agent of said City is to have the exclusive privilege of arranging for exchange of said new refunding bonds for the indebtedness contemplated to be refunded for a period beginning at the

date of execution hereof and running up to a date within ten (10) days prior to such date as new refunding bonds may be advertised for public sale, which date shall not in any event be more than eighteen (18) months after the entry of the validation decree. In said exchanges the First Party shall have the option as to maturity of new refunding bonds allocated for exchange. It is the intention of Second Party that at the expiration of said period above allowed for exchange to advertise for sale and sell upon sealed proposals all bonds of said new refunding issue which shall not have been issued for exchange during said period. First Party hereby agrees that at such public sale it will submit a proposal conforming to the terms of the notice of sale and agrees to pay not less than par plus accrued interest, if any, for all of said unexchanged new refunding bonds.

Section V. That said Second Party shall take such action as may be necessary to consummate the refunding program herein authorized and agrees that the proceedings authorizing the issuance of new refunding bonds or the new refunding bonds themselves, or both, shall provide for said new refunding bonds to be general obligations of the Second Party, containing a pledge of the full faith and credit of the issuing taxing unit, including homesteads, for the prompt payment of the principal of and interest on said new refunding bonds according to their tenor; provide for payment in legal tender of the United States of America of all taxes provided to be necessary for the payment of the principal of and interest on said refunding bonds; provide for said refunding bonds to be continuations, extensions, mergers and renewals of the original bonds and other indebtedness provided to be refunded and the obligations evidenced thereby; provide for all rights and remedies which were available by contract for the support and enforcement of the original bonds and other indebtedness proposed to be refunded and the obligations evidenced

thereby will continue and remain available for the support and enforcement of the new refunding bonds issued in lieu thereof; and provide that in the event said refunding bonds or any term, provision, condition, agreement or clause therein shall be held for any reason whatsoever either invalid or unenforceable, then the holder of the refunding bond effected thereby shall be subrogated to any and all rights and remedies which at any time existed in favor of the holders of any bonds thereby refunded. Said new refunding bonds and the terms thereof are to be approved as to legality by nationally recognized bond attorneys.

Section VI. First Party as Fiscal Agent of said City shall receive as its compensation an amount equal to one and three-fourths (1 $\frac{3}{4}$ %) per cent of the par value of all new refunding bonds validated and exchanged as hereinbefore provided, and two and one-fourth (2 $\frac{1}{4}$ %) per cent of the par value on the additional refunding bonds validated and for which it shall submit a bid pursuant to Section IV hereof provided that the compensation first mentioned shall be due as bonds are exchanged in multiples of One Hundred Thousand (\$100,000.00) Dollars, and that the compensation last mentioned shall be due and payable only after said bonds have been taken up and paid for by the successful bidder.

Section VII. First Party agrees to pay certain expenses incident to the issuance of new refunding bonds, including printing the bonds and the cost of approving opinion of the nationally recognized bond attorneys; further the First Party is to bear the expense incident to contacting and circularizing the bond holders in an effort to secure exchanges as herein outlined. It is understood, however, that the parties hereto will jointly use their best efforts to induce a holder of the presently outstanding bonds and other evidences of indebtedness to be refunded hereunder, and included within the scope hereof, to participate in the re-

funding program set forth herein, and until otherwise mutually agreed upon the plan herein set forth shall constitute the exclusive refunding program for said Second Party.

Section VIII. That whenever and as often as First Party shall request in writing to be informed as to the financial affairs of the Second Party such as the amount of tax levy, collection, delinquency, the amount of revenue and income available from sources other than from ad valorem taxes, the amount of bonds issued, outstanding or retired, or the status or amount of interest of sinking fund, Second Party agrees to furnish such information promptly and to give due consideration to any recommendations of the First Party in regard to such financial affairs.

Section IX. It is mutually understood and agreed that in the event the United States of America shall become involved in war during the period of time covered by this contract then this contract shall become subject to cancellation at the option of either parties.

In Witness Whereof First Party has executed this instrument in duplicate under its hand and seal and Second Party has caused this instrument to be executed in duplicate in its name under due authority and has caused the same to be signed by the Mayor-Commissioner of the City of Winter Haven and the seal of said City to be duly affixed hereto, attested by the City Auditor and Clerk of said City, all as of the 7th day of October, A. D. 1940.

LEEDY, WHEELER & COMPANY.

By L. C. LEEDY,
President.

Attest:

M. E. WELLER,
Asst. Secretary.

(Seal Leedy-Wheeler & Co.)

CLYDE C. PIERCE CORPORATION.

By C. C. PIERCE,
President.

Attest:

OLIVE BOOTE,
Secretary.

(Seal Clyde C. Pierce Corporation.)

Adopted and confirmed by Resolution of City Commission of Winter Haven, Florida.

CITY OF WINTER HAVEN,
FLORIDA.

By E. S. HORTON,
Mayor-Commissioner.

Attest:

O. R. WAY,
City Auditor and Clerk.

(Seal Winter Haven, Fla.)

105

EXHIBIT "C"

No. 702

\$1000

United States of America,
State of Florida, County of Polk.

City of Winter Haven
General Refunding Bond Issue of 1933,
Series A.

Know All Men By These Presents: That the City of Winter Haven in the County of Polk, State of Florida, hereby acknowledges itself to be indebted and promises to pay to bearer the sum of

One Thousand Dollars

on the first day of April, 1963, with the option of prior redemption as hereinafter provided, and to pay interest on said sum as hereinafter specified from the date hereof until paid or until called for redemption, said interest to be payable semi-annually on the first days of April and October of each year upon presentation and surrender of the attached coupons as they severally become due. Both principal and interest of this bond are payable in lawful money of the United States of America at The Central Hanover Bank and Trust Company of New York City, in the City of New York, New York, and for the prompt payment of this bond and interest thereon as the same become due, the full faith, credit and all the resources of said City of Winter Haven are hereby irrevocably pledged.

Interest on the amount of this bond as evidenced by the interest coupons hereto attached shall be enforceable

and collectible at the rate of three and one-half per cent per annum from date hereof to April 1, 1935; at the rate of four per cent per annum from and including April 1, 1935 to April 1, 1936; at the rate of four and one half per cent per annum from and including April 1, 1936 to April 1, 1937; at the rate of five per cent per annum from and including April 1, 1937 to April 1, 1943; and at the rate of six per cent per annum thereafter; and if this bond shall not have been called and retired as hereinafter provided prior to maturity, the full interest at the rate of six per cent per annum less the amount theretofore paid from the date hereof to said maturity date shall also at that time be enforceable, collectible and paid upon presentation and surrender of said bond. The right is hereby reserved to call and redeem this bond on any interest payment date according to the following schedule:

On or prior to April 1, 1943, at par, accrued interest at the rate then prevailing as enforceable and collectible plus one-half of the deferred or accumulated interest for ten years:

On or prior to two years before the maturity of the respective bonds and during the period of time from April 1, 1943 to and including April 1, 1953, at par, accrued interest at the rate then prevailing as enforceable and collectible plus three-fourths of the deferred or accumulated interest for ten years:

From April 1, 1953 to and including April 1, 1963 at par, accrued interest at the rate then prevailing as enforceable and collectible plus the full deferred or accumulated interest for ten years:

However, at maturity this bond shall be payable at par plus the full amount of deferred interest which in this

case shall be par, accrued interest at the rate then prevailing as enforceable and collectible and the full deferred interest being One Hundred Forty-five Dollars.

In the event of the exercise of such right, notice of such redemption will be given as provided by the resolution adopted by the governing authority of the City of Winter Haven authorizing the issuance of this bond. Said bond when so called shall cease to bear interest on such redemption date and the interest otherwise payable at maturity to make up the total of six per cent except as provided in said call for redemption shall be deemed to be waived by the surrender by the holder of such called bond.

This bond shall be negotiable and is one of a series of bonds issued by the City of Winter Haven, for the purpose of refunding certain legal and valid indebtedness heretofore legally created by said City of Winter Haven, evidenced by bonds and interest thereon, for the payment of which the full faith and credit of said City of Winter Haven have been and are legally pledged, and said series is issued under authority of and in full compliance with the Constitution and Laws of the State of Florida, including Chapter 15772, Laws of Florida, 1931, the provisions of the City Charter, and in pursuance of resolutions and proceedings of the City Commission of the City of Winter Haven, duly and legally adopted and taken.

And It Is Hereby Certified and Recited that all acts, conditions and things required to be done precedent to and in the issuance of said bonds have been properly done, happened and been performed in regular and due form as required by law, and that the indebtedness which is refunded by this series of bonds is a legally refund-

able, constitutional, subsisting and legal obligation of said City of Winter Haven, and that neither the indebtedness which is refunded for this series of bonds, together with all the other indebtedness of said City of Winter Haven, exceed any limitation prescribed by the Constitution or Statutes of the State of Florida, and that, before the issuance of this bond, provision has been made for the levy and collection of a tax upon all the taxable property within said City of Winter Haven, which, together with other applicable revenue and income pledged to the payment of the interest and principal requirements, is sufficient in amount to provide for the payment of the principal and interest hereof as the same become due.

In Witness Whereof, the City of Winter Haven has caused this bond to be signed by its Mayor-Commissioner and attested by its City Auditor and Clerk under the corporate seal and the interest coupons hereto attached to be executed with the facsimile signatures of said Mayor-Commissioner and City Auditor and Clerk which officials by the execution of this bond do each adopt as and for his own proper signature his respective facsimile signature appearing on said coupons, all as of the first day of April, 1933.

O. P. WARREN,

Mayor-Commissioner, City of
Winter Haven, Florida.

Attested:

JOHN C. TERWILLIGER,

City Auditor and Clerk, City of
Winter Haven, Florida.

And on the reverse side appears:

146

Number
702

United States of America.

State of Florida,
County of Polk.

City of Winter Haven
General Refunding Bond
Issue of 1933.
Series A

\$1000

Dated April 1, 1933

Due April 1, 1963

Optional any interest paying date

Interest $3\frac{1}{2}$ per cent from date to April 1, 1935;

Interest 4 per cent from and including April 1, 1935
to April 1, 1936;

Interest $4\frac{1}{2}$ per cent from and including April 1, 1936
to April 1, 1937;

Interest 5 per cent from and including April 1, 1937
to April 1, 1943;

Interest 6 percent from and including April 1, 1943, to
maturity.

Interest payable semi-annually on the First days of
April and October of each year.

Both principal and interest payable at the office of Central Hanover Bank and Trust Company of New York in the City of New York, New York.

Validated and confirmed by decree of the Circuit Court of the Tenth Judicial Circuit of Florida, in and for Polk County, rendered on the 8th day of September, 1933.

J. D. RAULERSON,

Clerk of the Circuit Court of
Polk County, Florida.

On the 23rd day of June, A. D. 1941, the Answer of Defendant was filed, in the words and figures following:

No. 21910-37-207. In the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida. In Chancery. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant. Bill for Declaratory Decree and Other Relief. Answer of Defendant. Filed June 23, 1941. H. C. Pelleway, Judge. Filed in this office Jun. 23, 1941. D. H. Sloan, Jr., Clerk Circuit Court. Henry Sinclair, Attorney at Law, Winter Haven, Florida.

110 ANSWER OF DEFENDANT.

In the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida. In Chancery.

George Andrews, Plaintiff,

vs.

=2190-37-207.

City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

Comes now the City of Winter Haven, a municipal corporation, of the County of Polk and State of Florida,

defendant in the foregoing cause, and for answer to the Bill of Complaint herein filed, says:

1. The defendant admits the plaintiff is the owner and holder, for value, of refunding bonds of the City of Winter Haven, issue of 1933, and admits that the plaintiff was a member of the Winter Haven Refunding Agency authorized to be created in that certain contract entered into by and between the City of Winter Haven and certain creditors, dated the 16th day of May, A. D., 1933. The defendant further admits that the Winter Haven Refunding Agency, as fiscal agent of the City, supervised the validation of the refunding bonds of the City, issue of 1933, and procured a large percentage of the original bondholders of the City to exchange original bonds for bonds of the refunding issue of 1933.

2. Answering paragraph 2 of the said Bill of Complaint, defendant admits that the City entered into a contract with Leedy Wheeler and Company, a corporation, of Orlando, Florida, and Clyde Pierce Corporation, a corporation, of Jacksonville, Florida, wherein and whereby said corporations were appointed fiscal agents of the City of Winter Haven to refund and exchange the outstanding bond indebtedness of the defendant and it admits that no provision was made therein to pay interest represented by a deferred interest coupon attached to each of the refunding bonds, issue of 1933, upon call of said bonds, and admits provision only has been made in the contract aforementioned to provide funds to call the refunding bonds of the City issue of 1933, at par, plus accrued interest, except such accrued interest as may be represented by said deferred interest coupons attached to said bonds of the City issue of 1933.

Further answering said Bill of Complaint, this defendant says that said deferred coupons attached to each and

every of the bonds of the said City, being refunding bonds issue of 1933, are void and unenforceable; that said refunding bonds, issue of 1933, constitute nothing more than an extension of the original obligation or bond debt of the City of Winter Haven under the same taxing power as was pledged to the payment of the original bonds and that in and by the contract of 1933 under which said bonds were refunded provision was made for refunding the entire bond indebtedness of said City of Winter Haven, including all accrued interest and such bond indebtedness plus all accrued interest was brought forward and refunded by said refunding bonds, issue of 1933, except a small percent held by owners who refused to exchange original bonds or judgments based thereon, although refunding bonds were provided for exchange by the City for such unrefunded indebtedness; that the deferred interest coupon set forth and described in plaintiff's Bill of Complaint and attached to each of the bonds of the issue of 1933, aforementioned, covers and represents the difference in interest rate between the original bonds of said City of Winter Haven and the interest rate of the refunding bonds, issue of 1933, payable during earlier years of the life of said refunding bonds, resulting in the rate of the refunding bonds, issue of 1933, with said deferred interest coupon attached and made a part thereof and provision made for the payment thereof, being the same as that borne by the original bonds of said City of Winter Haven refunded thereby; that in and by said refunding contract of 1933, the said City of Winter Haven agreed to pay the Winter Haven Refunding Agency the sum of two (2%) per cent of the bond indebtedness exchanged by such agency, for its service as fiscal agent in and about supervising and procuring validation of the refunding bonds, bond attorneys' approval, etc., and exchange of the bonds, and a large percentage of the bonds having been exchanged, the said City of Winter Haven

paid to said Winter Haven Refunding Agency or its successor in interest the full fee or compensation to which said agency thereby became entitled, viz., the sum of Thirty-five Thousand One Hundred (\$35,100.00) Dollars; that by reason thereof, there was added to the entire existing bond indebtedness of the City of Winter Haven, the fees or compensation paid to the fiscal agent, aforementioned, or its successor in interest, by and under the 1933 refunding contract, without a referendum being had as required by Section VI of Article 9, of the Constitution of the State of Florida, and such refunding bonds, issue of 1933, approved by freeholders entitled to vote in said election and without the municipality and its tax payers receiving even a concession on the interest rate borne by the original bonds; and said deferred coupon attached to each and every of the refunding bonds, issue of 1933, of said City of Winter Haven, became and is void, unenforceable and unconstitutional.

3. Answering paragraph 3 of said Bill of Complaint this defendant admits that it levied only fifteen (15) mills on the dollar of assessed value of all taxable property in said City as established by Chapter 11301, Acts of Florida, 1925, for the fiscal year 1940-41 of said City, to pay outstanding bonds of the City of the refunding issue of 1933, and admits that by the terms of the refunding contract of 1933, the City is pledged to use all surplus funds, above interest requirements, in the purchase or call of bonds, issue of 1933, or retirement of same when due and admits that it intends to pay accrued interest on refunding bonds, issue of January 1, 1941, of said City which will mature July 1, 1941, from debt service funds now on hand or which may accrue before July 1, 1941, in said fund from levies heretofore made for bonds of the refunding issue of 1933 of said City; further answering said paragraph this defendant admits that taxes

do not become due and payable under the Charter of the City until November 1st of each year and admits that the City has no way of raising funds to meet interest due October 1, 1941, on bonds of the refunding issue of 1933, except from levies heretofore made for bonds of the issue of 1933 of said City. Further answering said paragraph, this defendant says that the refunding bonds, issue of January 1, 1941, of said City, which have heretofore been validated and are now being printed preparatory to exchange for outstanding bonds of said City, are merely an extension of the original bond indebtedness of the City as evidenced by the refunding bonds, issue of 1933, or any prior bond which may not have been exchanged for said bonds, issue of 1933, and that payment of interest upon such bonds, issue of January 1, 1941, which shall have been exchanged on or before July 1, 1941, will constitute a payment upon the bond indebtedness of the City of Winter Haven and payment upon the debt evidenced by the refunding bonds, issue of 1933, in a new form, but at a lower rate of interest.

That the said plaintiff and other bondholders of the City of Winter Haven Refunding Bonds, issue of 1933, will be benefited by payment of interest on the bonds, issue of 1941, in July 1941, at a lesser rate of interest which shall have been exchanged on that date.

4. Answering paragraph 4 of said Bill of Complaint, the defendant admits that under the 1933 contract, aforementioned, the City of Winter Haven is required to levy annually a sufficient millage to produce the sum of One Hundred Twenty Thousand (\$120,000.00) Dollars annually solely for the payment of accruing interest upon, and the purchase, call or retirement of bonds of the issue of 1933 of said City, as same shall severally mature. Further answering said paragraph this defendant admits that it

has advised the plaintiff by and through its City Attorney that during the fiscal year 1941-42, the City proposes to levy a tax only for the payment of interest and to create a sinking fund to pay the refunding bonds, issue of January 1, 1941, of said City, and intends thereafter in each succeeding fiscal year, to levy a tax only for the payment of interest and principal of refunding bonds, issue of 1941, and intends to make no provision whatever for the refunding bonds, issue of 1933, of said City, but this defendant denies that a refusal to levy a tax for the refunding bonds, issue of 1933, during the fiscal year 1941-42, of said City, or subsequent years, will be a violation of the refunding contract of 1933; on the contrary, this defendant says that provision is made in the new contract with the new fiscal agents, dated October 7, 1940, for the call of all outstanding bonds of said City at par and accrued interest, except the deferred interest coupon attached to said refunding bonds, issue of 1933; that said deferred interest coupon is void and unenforceable, as hereinbefore set forth, and said City is without power and authority to pay such deferred coupon.

5. Answering paragraph 5 of said Bill of Complaint, this defendant denies that the deferred interest coupon attached to each of the refunding bonds of the City of Winter Haven, issue of 1933, is valid, and a binding obligation of this defendant, and says that said coupon should not be paid at fifty (50%) per cent of the face amount thereof or at any other percentage thereof.

6. Answering paragraph 6 of said Bill of Complaint, this defendant admits that proceeds from the annual levies provided for by the 1933 contract were to be used solely to pay interest accrued on the refunding bonds, issue of 1933, and to advertise for bids and purchase at the best price obtainable bonds of said City, issue of 1933, or

call said bonds at par and accrued interest including interest represented by the deferred coupon, until such bonds begun to mature in 1948, but this defendant denies that a diversion of any part of the funds collected from prior levies to pay interest upon and retire bonds of the issue of 1933 or failure of the City henceforth to levy One Hundred Twenty Thousand (\$120,000.00) Dollars annually to service exclusively said refunding bonds, issue of 1933, so long as any of said bonds remain unretired, will constitute a violation of the 1933 refunding contract between the Winter Haven Refunding Agency and the said City of Winter Haven.

7. Answering paragraph 7 of said Bill of Complaint, this defendant admits that the issues presented by plaintiff's Bill will vitally affect the value of plaintiff's bonds, and admits that the plaintiff is entitled to invoke the jurisdiction of this Court for the purpose of having the Court enter a Declaratory Decree upon issues raised by plaintiff's Bill. //

8. Answering paragraph 8 of said Bill of Complaint, this defendant denies the right of the plaintiff to have an injunction, as stated in said paragraph.

HENRY SINCLAIR

Solicitor for Defendant

On the 23rd day of June, A. D. 1941, the Motion for Decree on Bill and Answer was filed, in the words and figures following:

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida, In Chancery, 21910-37-207, George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant. Motion for Decree on Bill and Answer. Filed

June 23, 1941. H. C. Pelleway, Judge. Filed in this office Jun. 23, 1941, D. H. Sloan, Jr., Clerk Circuit Court. H. C. Crittenden, for Plaintiff.

119 MOTION FOR DECREE ON BILL AND ANSWER.

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery.

George Andrews, Plaintiff,

vs.

=21910-37-207.

City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

Now comes the Plaintiff, George Andrews, and moves the Court for a decree on the Bill of Complaint and the Answer of the Defendant to said Bill, filed herein, on the ground the Answer is insufficient as a defense and Plaintiff is entitled to the Declaratory Decree sought and injunction against the Defendant and its officers and agents as prayed in the Bill.

H. C. CRITTENDEN,

W. H. HAMILTON,

Solicitors for Plaintiff.

On the 23rd day of June, A. D. 1941, at the hour of 10:50 o'clock in the forenoon, the Order Granting Motion for Decree on Bill and Answer was filed for record and entered in Chancery Order Book 116, page 27, in the words and figures following:

No. 21910-37-207. X414149. In the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida.

In Chancery. Filed for record. 1941 Jun 23 AM 10 50. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant. D. H. Sloan, Jr., Clk. Ct. Ct. Polk Co., Florida. Bill for Declaratory Decree and Other Relief. Order Granting Motion for Decree on Bill and Answer. State of Florida, County of Polk. Filed for record this June 23, 1941. Recorded in Chancery Order Book 116, Page 27. Record Verified: D. H. Sloan, Jr., Clerk Circuit Court. By L. Stidham, D. C. Henry Sinclair, Attorney at Law. Winter Haven, Florida. Record Verified.

122 ORDER GRANTING MOTION FOR DECREE
ON BILL AND ANSWER.

In the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida. In Chancery.

George Andrews, Plaintiff.

vs.

City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

This cause came on this day to be heard on the motion of the plaintiff for a decree on the Bill of Complaint and the Answer of the defendant thereto, and the argument of counsel for the respective parties, it being admitted by the defendant that this Court has jurisdiction of the parties and authority to enter a Declaratory Decree herein under Section 4953 and 4954 C. G. L. 1927; and the Court being of the opinion that the primary question here involved is the validity of the deferred interest coupons attached to each of the refunding bonds of the City

of Winter Haven issue of 1933, the Court will therefore discuss and dispose of this issue before considering others or answering the questions propounded in the Bill of Complaint seriatim.

The plaintiff contends that the deferred interest coupon is valid and enforceable as a mere continuance of the rate of interest borne by the original bonds refunded, except the amount required to retire the deferred coupon, may by the terms of the bonds and the 1933 refunding contract, be substantially reduced by early call of the bonds, viz., at fifty (50%) per cent of the face amount thereof if called before April 1, 1943, and if called on or prior to two years before the maturity of the respective bonds and during the period of time from April 1, 1943, and April 1, 1953, at seventy-five (75%) per cent of the face amount of the deferred coupon; that such contingent reduction of interest rate on call is a definite advantage to the City and its taxpayers, and sufficient, coupled with the extension of the principal of the bond indebtedness for a period of years, to off set any cost incurred by reason of the refunding, including fiscal agent's fees, looking at the matter from a strictly dollars and cents angle. In this, it is only logical to assume some savings to the City and taxpayers would be made by early call of the bonds, and it is logical to assume that savings would exceed the approximate sum of Thirty-five Thousand (\$35,000.00) Dollars paid by the City as refunding expense.

The City contends the deferred interest coupon attached to the several bonds is invalid and unenforceable, as having been issued by the City in violation of Section VI, Article IX of the Constitution of Florida, in this, under the 1933 refunding contract, the full bond indebtedness is refunded, including all accrued interest to the date of the new bonds, and the effect of the deferred interest

coupon is to retain the full indebtedness, plus the rate of interest borne by the original bonds, and the result is the adding to the bond indebtedness of the City the cost of refunding, without a favorable referendum of freeholder electors of the City as required by Section VI, Article IX of the Constitution; the City does not contend that the 1933 refunding bonds are invalid by reason of the invalidity of the deferred coupons, it contending only that the deferred coupon is void, and the City is legally entitled to call the 1933 bonds under the 1933 refunding contract, less and except the face amount or any portion thereof of such deferred coupons.

The Court is of the opinion that under the decisions of the Supreme Court of Florida in the case of *Outman vs. Cone*, 192 So. 611, and *Taylor vs. Williams*, 195 So. 175, that the deferred coupons are not authorized by law and must be eliminated as an unenforceable provision of the bonds otherwise the entire 1933 issue of refunding bonds of the City might be rendered invalid; but the provision in the 1933 refunding contract and the 1933 bonds with reference to such deferred coupons may be treated and will be treated as severable or separable from the balance of the contract and the several bonds, and thus elided therefrom, rendering the provisions remaining in the 1933 bonds fully enforceable.

The Court having now disposed of the principal issue involved in the opinion of the Court, the Court will take up and answer seriatim the questions propounded in the Bill of Complaint.

It is thereupon Ordered, Adjudged and Decreed that question 1, as follows:

"Is the deferred interest coupon attached to each of the refunding bonds of the City of Winter Haven, issue of 1933, valid or invalid?"

shall be answered by stating such deferred coupon is invalid.

Answering question 2, as follows:

"Under the refunding contract of 1933, will a tender by the City on call of principal, plus accrued interest of the refunding bonds issue of 1933, less and except accrued interest represented by the deferred interest coupons attached to the 1933 bonds, toll the running of interest on the refunding bonds, issue of 1933? And will the holder of bonds of the issue of 1933, be required to accept such tender without receiving in addition thereto the amount stipulated as payable on call in payment of the deferred interest coupon?"

The Court is of the opinion that both sections of the question should be and same are answered in the affirmative.

Answering question 3, as follows:

"May the City pay interest on City of Winter Haven refunding bonds, issue of January 1, 1941, accruing July 1, 1941, from proceeds of tax collections from the general levies for debt service for the fiscal year 1940-41 of said City, and prior years since 1933, where such levies were made solely for the refunding bonds issue of 1933? And would such payment impair the contract right of this plaintiff to have all funds collected from levies made for the 1933 bonds applied solely to the retirement of the interest and principal of said bonds so long as any of such bonds remain outstanding; or will the 1941 refunding bonds, when exchanged, be a mere continuation of the debt evidenced by the 1933 bonds in a new form.

so as to justify payment of interest thereon from proceeds of levies made for the 1933 bonds?"

The Court is of the opinion, the City may pay interest accruing on the new refunding issue of January 1, 1941, which will accrue July 1, 1941, from proceeds of tax collections from general levies for debt service for the fiscal year 1940-41 of the City and prior years since 1933, although levied exclusively for the 1933 bonds, the new bonds, issue of 1941, being a mere continuation of the existing indebtedness of the City in new form, but at a lower rate of interest; the answer therefore to the first section of this question is "yes".

The second section of this question is answered as follows: The Court is of the opinion that payment of interest on the 1941 bonds, as aforesaid, does not impair the contract right of plaintiff, nor other holders of the 1933 issue of bonds; and the 1941 refunding bonds, when exchanged, being a mere continuation of the debt evidenced by the 1933 bonds in a new form, will justify the City in paying interest accruing on the 1941 bonds from proceeds of levies made for the 1933 bonds.

Answering question 4, as follows:

"May the City of Winter Haven be commanded and required by mandatory injunction to levy hereafter, so long as any refunding bonds of said City of the issue of 1933 remain outstanding, (and whether part of said bonds be exchanged for the new refunding bonds, issue of January 1, 1941, or not,) a tax against taxable property in said City of Winter Haven, sufficient to produce the sum of \$120,000.00 annually, solely and exclusively for the refunding bonds issue of 1933?"

This question should be and same is answered in the negative, with the following qualification; should the City fail to provide funds to call the 1933 bonds with accrued interest, as provided in the 1940 refunding contract, except interest represented by the deferred coupon, and some of the holders of 1933, refuse to exchange their bonds for the new issue of January 1, 1941, the Court is of the opinion that the holders of the 1933 issue of bonds may require a levy of a tax annually under the provisions of the 1933 refunding contract in a sufficient amount to produce such prorated amount of the One Hundred Twenty Thousand (\$120,000.00) Dollars annual levy, as the amount of the unrefunded 1933 bonds bear to the outstanding principal bond indebtedness of the City at the time such levy is sought.

Answering question 5, as follows:

"May this Court enjoin the payment of interest on the January 1, 1941, issue of refunding bonds of the City of Winter Haven, accruing July 1, 1941, from funds collected from levies made solely for the refunding bonds of said City issue of 1933?"

The Court answers this question in the negative.

Answering question 6, as follows:

"If said deferred interest coupon attached to the refunding bonds, issue of 1933, be found to be invalid by the Court, will such invalidity invalidate the call provision in the 1933 refunding contract, and in the refunding bonds of 1933, so as to vitiate the call feature although in said 1933 contract and bonds, or is such deferred coupon such a severable or separable portion of such contract of 1933 and the bonds of the issue of 1933, so as to be treated as elided and eliminated therefrom

without affecting other provisions of the contract and bonds of 1933, including the call provision in such contract and bonds?"

The Court finds that the invalidity of the deferred coupon attached to the refunding bonds, issue of 1933, and the provision in the 1933 refunding contract for the issuance of the deferred coupon is severable from the bonds and balance of the contract, respectively, and does not invalidate the call provision in the 1933 bonds or the 1933 contract; the Court further finds, and answers this question, by stating the deferred coupon attached to the several bonds and that portion of the 1933 contract relating to such deferred coupon may be and is treated as elided and eliminated from the 1933 bonds and contract respectively, without affecting the validity or enforceability of any other provisions of such bond or the 1933 contract;

And now having answered the several questions propounded, it is Further Ordered, Adjudged and Decreed that the prayer of the plaintiff for injunction against the City, its officers and agents, incorporated in the Bill of Complaint, be and the same is hereby denied:

And the plaintiff by his solicitor having announced to the Court that he elected not to plead further in said cause, it is thereupon Ordered, Adjudged and Decreed that this cause be and the same is hereby dismissed, with costs herein in the sum of \$7.50 taxed against the plaintiff.

Done, Ordered and Adjudged at Lakeland, Polk County, Florida, this 23 day of June, A. D., 1941.

H. C. PELLEWAY,

Judge.

State of Florida,
County of Polk,

Filed for record this June 23, 1941 at 10:50 a. m. Recorded in Chancery Order Book 116, Page 27 and Record Verified.

D. H. SLOAN, JR.,
Clerk Circuit Court.
L. STIDHAM, D. C.

On the 25th day of June, A. D. 1941, Notice of Appeal was filed and entered in Chancery Order Book 116, page 73, in the words and figures following:

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery. No. 21910 $\frac{1}{2}$ -H-139. X414252. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant. Notice of Appeal. Filed for record 1941 Jun 25 PM 2 57. D. H. Sloan, Jr., Clk. Ct. Polk Co. Florida. State of Florida, County of Polk. Filed for record this Jun 25, 1941. Recorded in Chancery Order Book 116, Page 73. Record Verified. D. H. Sloan, Jr., Clerk Circuit Court. By L. Stidham, D. C. H. C. Crittenden, Attorney at Law, 311-12 Beyer Building, Winter Haven, Florida, for Plaintiff. Record Verified.

121

NOTICE OF APPEAL.

In the Circuit Court, Tenth Judicial Circuit in and for
Polk County, Florida. In Chancery.

George Andrews, Plaintiff,

vs.

City of Winter Haven, a municipal corporation of the
County of Polk, and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

Now comes the Plaintiff George Andrews by and through his undersigned Solicitors, and enters this his appeal to the Supreme Court of Florida, from that certain final order on motion of the Plaintiff for decree on Bill and Answer made and entered on the 23rd day of June A. D. 1941, by the Circuit Court of Polk County, Florida, in that certain cause pending in the Circuit Court, Tenth Judicial Circuit, in and for Polk County, Florida, in Chancery, wherein George Andrews was Plaintiff, and the City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, was Defendant, the said order and final decree being recorded A. D. 1941 in Chancery Order Book 116, Page 27 in the office of the Clerk of the Circuit Court of Polk County, Florida; and the Defendant as aforementioned and designated is hereby made a party to this appeal.

This appeal is entered on this the 25th day of June A. D. 1941 and the same is hereby made returnable in the Supreme Court of Florida on the 30th day of July A. D. 1941.

Dated at Winter Haven, Florida, this 25th day of June A. D. 1941.

H. C. CRITTENDEN

W. H. HAMILTON

Solicitors for Plaintiff.

I, the undersigned Solicitor for the Defendant, City of Winter Haven and City Attorney for the said City of Winter Haven, do hereby acknowledge receipt of a copy of the foregoing notice of appeal.

Dated at Winter Haven, Florida, this 25th day of June A. D. 1941.

HENRY SINCLAIR,
Solicitor for Defendant.

State of Florida,
County of Polk.

Filed for Record this June 25, 1941 at 2:57 P. M. Recorded in Chancery Order Book 116, Page 73 and Record Verified.

D. H. SLOAN, JR.,
Clerk Circuit Court,
L. STIDHAM, D. C.

On the 25th day of June, A. D. 1941, Assignment of Errors was filed, in the words and figures following:

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery. No. 21910¹/₂-H-139. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant. Assignment of Errors. Filed in this office, Jun 25, 1941. D. H. Sloan, Jr., Clerk Circuit Court. H. C. Crittenden, Attorney at Law, 311-12 Beyer Building, Winter Haven, Florida, for Plaintiff.

ASSIGNMENT OF ERRORS.

In the Circuit Court, Tenth Judicial Circuit in and for
Polk County, Florida. In Chancery.

George Andrews, Plaintiff,

vs. 2

City of Winter Haven, a municipal corporation of the
County of Polk and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

Comes now George Andrews, Plaintiff in the foregoing cause, by his undersigned solicitor, and files these his assignment of errors upon which he relies for reversal of the foregoing cause in the Supreme Court of Florida, which assignments are as follows, to-wit:

1. The Court erred in the entry of its order of 1941, recorded in Chancery Order Book 116, Page 27, Public Records, Polk County, Florida, denying injunction sought by the Plaintiff against the City of Winter Haven, its officers and agents and dismissing the cause.

2. The Court erred in making and entering its decree aforementioned in holding the deferred coupon attached to each of the bonds issue of 1933 of the City of Winter Haven to be invalid and unenforceable.

3. The Court erred in making and entering its decree aforementioned in holding the City without power and authority to issue the deferred interest coupon aforementioned as in violation of Section 6, Article 9, of the Constitution of Florida.

4. The Court erred in the entry of said decree in holding that under the refunding contract of 1933 and

under the contract as evidenced by the 1933 bonds themselves that a tender by the City on call of principal of said 1933 bonds, plus accrued interest upon said bonds, less and except accrued interest represented by the deferred interest coupon attached to each of the 1933 bonds, will toll the running of interest on the refunding bonds issue of 1933.

5. The Court erred in the entry of said decree in holding that a holder of bonds of the issue of 1933 will be required to accept tender of principal, plus accrued interest of the refunding bonds issue of 1933; except accrued interest represented by deferred coupon, without receiving in addition thereto the amount stipulated as payable on call in payment of the deferred interest coupon attached to the several bonds.

6. The Court erred in the entry of said decree in holding that the City of Winter Haven may pay interest on City of Winter Haven refunding bonds issue of January 1, 1941 accruing July 1, 1941 from proceeds of tax collections from the general levies for debt service for the fiscal year 1940-41 of said City and prior years since 1933, although such levies were made solely for the refunding bonds issue of 1933.

7. The Court erred in the entry of said decree in holding that payment of interest accruing July 1, 1941 on City of Winter Haven refunding bonds issue of January 1, 1941, out of proceeds of tax collections from general levies for debt service made solely for refunding bonds issue of 1933 would not impair the contract right of the Plaintiff under the 1933 refunding contract to have all funds collected from levies made for the 1933 bonds applied solely to the retirement of the interest and principal of the 1933 bonds so long as any such bonds remain outstanding.

8. The Court erred in the entry of said decree in holding that the 1941 refunding bonds when exchanged would be a mere continuation of the debt evidenced by the 1933 bonds in a new form so as to justify payment of interest thereon from proceeds of levies made for the 1933 bonds.

9. The Court erred in the entry of said decree in holding that the City of Winter Haven may not be commanded and required by mandatory injunction to levy hereafter so long as any refunding bonds of said City issue of 1933 remain outstanding a tax against taxable property in said City of Winter Haven sufficient to produce the sum of \$120,000.00 annually, solely and exclusively for the refunding bonds issue of 1933; and this whether part of said bonds issue of 1933 be exchanged for new refunding bonds issue of 1941.

10. The Court erred in the entry of said decree in holding that should the City fail to provide funds to call the 1933 bonds with accrued interest as provided in the 1940 refunding contract except interest represented by the deferred coupon and some of the holders of 1933 bonds refused to exchange their bonds for the new issue of January 1, 1941 that such holders of the 1933 bonds may require only a levy of a tax annually under the provisions of the 1933 refunding contract in a sufficient amount to produce only such pro rata amount of the 120,000.00 annual levy provided in the 1933 contract, as the amount of the unrefunded 1933 bonds bear to the outstanding principal bond indebtedness of the City at the time such levy is sought.

11. The Court erred in the entry of said decree in holding that the Court will not enjoin the payment of interest on the January 1, 1941 issue of refunding bonds

of the City of Winter Haven accruing July 1, 1941, from funds collected from levies made solely for the refunding bonds of said City issue of 1933.

12. The Court erred in the entry of said decree in holding that the invalidation of the deferred coupon attached to the 1933 bonds will not invalidate the the call provision in the 1933 refunding contract and in the refunding bonds of 1933 so as to vitiate the call feature altogether in said 1933 contract and bonds.

13. The Court erred in the entry of said decree in holding that the provision in the 1933 contract with reference to the deferred coupon and the provision in the 1933 bonds themselves with reference to said deferred coupon are such a severable and separable portion of said contract and bonds so that same may be treated as elided and eliminated therefrom without affecting the call provision in such 1933 contract and bonds and so as not to vitiate said call provision.

Wherefore the premises considered Plaintiff prays that the Supreme Court reverse the order and final decree of the Circuit Court made and entered June 23rd, 1941, recorded in Chancery Order Book 116, Page 27, Public Records of Polk County, Florida, on motion of the Plaintiff for decree on Bill and Answer wherein the Court answered questions propounded by Plaintiff in the Bill of Complaint seeking a declaratory decree against the interest of the Plaintiff and in favor of the City of Winter Haven and denied Plaintiff's prayer for injunctive relief against said Defendant City of Winter Haven; and remand said cause to the Circuit Court of Polk County with instructions to said Court to answer the questions propounded by the Plaintiff in favor of the Plaintiff

and against the Defendant and grant the injunctive relief prayed by the Plaintiff in said Bill of Complaint.

H. C. CRITTENDEN,

W. H. HAMILTON,

Solicitors for Plaintiff.

State of Florida,

County of Polk.

I, the undersigned solicitor of record for the Defendant, City of Winter Haven, do hereby acknowledge receipt of a copy of the above and foregoing assignment of errors.

Dated at Winter Haven, Florida, this 25th day of June A. D. 1941.

HENRY SINCLAIR,

Solicitor for Defendant.

On the 25th day of June, A. D. 1941, Statement of Questions Proposed for Adjudication on Appeal was filed, in the words and figures following:

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery. No. 21910--H-139. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant. Statement of Questions Proposed for Adjudication on Appeal. Filed in this office Jun. 25, 1941. D. H. Sloan, Jr., Clerk Circuit Court. H. C. Crittenden, Attorney at Law, 311-12 Beyer Building, Winter Haven, Florida, for Plaintiff.

141 STATEMENT OF QUESTIONS PROPOSED FOR
 ? ADJUDICATION ON APPEAL.

In the Circuit Court, Tenth Judicial Circuit in and for
 Polk County, Florida. In Chancery.

George Andrews, Plaintiff,

vs. . . .

City of Winter Haven, a municipal corporation of the
 County of Polk and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

1. Where refunding bonds issue of 1933 of the City of Winter Haven issued to refund at principal of the outstanding indebtedness of said City, plus then accrued interest, have attached thereto and carry provision therefor in the refunding contract of 1933 and in the 1933 bonds themselves, deferred interest coupons, recouping interest to the old rate if not retired before maturity, and the refunding contract of 1933 and the 1933 refunding bonds provide for the retirement of such deferred coupons in cash at 50% of the face amount thereof, if the 1933 bonds are called before 1943, and thereafter at a higher percentage, and the City of Winter Haven now proposes to call the 1933 bonds at par plus accrued interest less and except accrued interest represented by the deferred interest coupon, may the City compel holders of the 1933 bonds to accept payment of the 1933 bonds less and except interest represented by the deferred coupon, upon the ground the deferred coupon represents an increase of the indebtedness of the City in 1933, so as to violate Section 6, Article 9, of the State Constitution, the refunding fee of the 1933 fiscal agent and other expense of such refunding program having been paid by the City, amounting to approximately \$35,000.00, and no favorable

referendum of the freehold electors being held before issuance of the 1933 bonds?

2. Is the deferred interest coupon attached to each of the refunding bonds of the City of Winter Haven, issue of 1933, valid?

3. (a) Under the refunding contract of 1933 will a tender by the City on call of principal plus accrued interest of the refunding bonds issue of 1933, less and except accrued interest represented by the deferred interest coupon attached to the 1933 bonds, toll the running of interest on the refunding bonds issue of 1933?

(b) Will the holder of bonds of the issue of 1933, be required to accept such tender without receiving in addition thereto the amount stipulated as payable on call in payment of the deferred interest coupon?

4. (a) May the City pay interest on City of Winter Haven refunding bonds issue of January 1, 1941, accruing July 1, 1941, from proceeds of tax collections from the general levies for debt service for the fiscal year 1940-41 of said City, and prior years since 1933, where such levies were made solely for the refunding bonds issue of 1933?

(b) Would such payment impair the contract right of the Plaintiff to have all funds collected from levies made for the 1933 bonds applied solely to the retirement of the interest and principal of said bonds so long as any of such bonds remain outstanding; or will the 1941 refunding bonds when exchanged be a mere continuation of the debt evidenced by the 1933 bonds in a new form so as to justify payment of interest thereon from proceeds of levies made for the 1933 bonds?

5. May the City of Winter Haven be commanded and required by mandatory injunction to levy hereafter so long as any refunding bonds of said City of the issue of 1933 remain outstanding, (and whether part of said bonds be exchanged for the new refunding bonds issue of January 1, 1941) a tax against taxable property in said City of Winter Haven sufficient to produce the sum of \$120,000.00 annually, solely and exclusively for the refunding bonds issue of 1933.

6. May the Circuit Court enjoin the payment of interest on the January 1, 1941 issue of refunding bonds of the City of Winter Haven accruing July 1, 1941 from funds collected from the levies made solely for the refunding bonds of said City issue of 1933?

7. If said deferred interest coupon attached to the refunding bonds issue of 1933 be found to be invalid by the Court, will such invalidity invalidate the call provision in the 1933 refunding contract, and in the refunding bonds of 1933, so as to vitiate the call feature altogether in said 1933 contract and bonds, or is such deferred coupon such a severable and separable portion of such contract of 1933 and the bonds of the issue of 1933, so as to be treated as elided and eliminated therefrom without affecting other provisions of the contract and bonds of 1933, including the call provision in such contract and bonds?

H. C. CRITTENDEN,

W. H. HAMILTON,

Solicitors for Plaintiff.

State of Florida,
County of Polk.

I, the undersigned Solicitor of Record for the Defendant, City of Winter Haven, do hereby acknowledge receipt of a copy of the above and foregoing statement of questions proposed for adjudication.

Dated Winter Haven, Florida, this 25th day of June A. D. 1941.

HENRY SINCLAIR,

Solicitor for Defendant.

On the 25th day of June, A. D. 1941, Stipulation was filed, in the words and figures following:

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery. No. 219101-H-139. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant. Stipulation. Filed in this office Jun. 25, 1941. D. H. Sloan, Jr., Clerk Circuit Court. H. C. Crittenden, for Plaintiff.

146

STIPULATION

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida. In Chancery.

George Andrews, Plaintiff,

vs.

City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

It is hereby stipulated by and between H. C. Crittenden and W. H. Hamilton, Solicitors for the Plaintiff in the

foregoing cause and Henry Sinclair, Solicitor for Defendant in the foregoing cause, that the Bill of Complaint with exhibits, the answer of the Defendant herein filed, the motion of the Plaintiff for a decree on the Bill and Answer, and the Order of Final Decree of the Circuit Court granting the Motion of the Plaintiff for Decree on Bill and Answer, together with the appeal papers herein filed, shall constitute the necessary pleadings and record of proceedings in the foregoing cause in the Circuit Court of Polk County essential for the Supreme Court of Florida to adjudicate the questions involved herein.

The Defendant hereby waives the 10 day period within which Appellée may file amendments to the questions proposed for adjudication.

Dated at Winter Haven, Florida, this 25th day of June 1941:

H. C. CRITTENDEN,

W. H. HAMILTON,

Solicitors for Plaintiff.

HENRY SINCLAIR,

Solicitor for Defendant.

On the 25th day of June, A. D. 1941, Directions to Clerk or Statement of Pleadings and Proceedings to be Incorporated in Record was filed, in the words and figures following:

In the Circuit Court, Tenth Judicial Circuit in and for Polk County, Florida: In Chancery. No. 21910¹-H-139. George Andrews, Plaintiff, vs. City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, Defendant. Directions to Clerk or Statement of Pleadings and Proceedings to Be Incorporated in Record. Filed in this office Jun. 25, 1941. D. H. Sloan, Jr., Clerk Circuit Court. H. C. Crittenden, Attorney at Law.

311-12 Beymer Building, Winter Haven, Florida, for Plaintiff.

149 DIRECTIONS TO CLERK OR STATEMENT OF
PLEADINGS AND PROCEEDINGS TO BE
INCORPORATED IN RECORD.

In the Circuit Court, Tenth Judicial Circuit in and for
Polk County, Florida. In Chancery.

George Andrews, Plaintiff,

vs.

City of Winter Haven, a municipal corporation of the
County of Polk and State of Florida, Defendant.

Bill for Declaratory Decree and Other Relief.

The Clerk of the above styled Court will please begin the preparation of a transcript of the proceedings in the above styled cause at the earliest time permitted by the rules of the Court, and complete the same as expeditiously as possible, and in time to be filed with the Supreme Court of Florida before the return day named in the notice of appeal herein filed, and will copy and certify the following:

1. Copy Bill of Complaint, with all exhibits attached, filed June 23rd, 1941.

2. Copy the Answer of the City of Winter Haven filed June 23rd, 1941.

3. Copy motion of the Plaintiff for a decree on the Bill of Complaint and the Answer of the Defendant to said Bill filed June 23rd, 1941.

4. Copy Order of the Court granting motion for decree on Bill and Answer and dismissing said cause filed and recorded June 23rd, 1941, and copy record of same.

5. Copy the notice of appeal filed and recorded June 25th, 1941, and the record of said notice of appeal.

6. Copy statement of Questions Proposed for Adjudication filed June 25th, 1941.

7. Copy Assignment of Errors filed June 25th, 1941.

7-a. Copy Stipulation of Counsel dated June 25, 1941.

8. Copy these Directions or statement.

9. Add certificate of the Clerk that all costs have been paid.

10. Add certificate of the Clerk authenticating transcript.

H. C. CRITTENDEN,

W. H. HAMILTON,

Solicitors for Plaintiff.

State of Florida,

County of Polk.

I, the undersigned Solicitor for the Defendant, City of Winter Haven, and City Attorney for the said City of Winter Haven, do hereby acknowledge receipt of a copy of the above and foregoing Directions to the Clerk or statement of pleadings and proceedings to be incorporated in the record.

Dated this 25th day of June A. D. 1941.

HENRY SINCLAIR,

Solicitor for Defendant.

On the 6th day of October, A. D. 1941, the Mandate of the Supreme Court of the State of Florida was filed in the words and figures following:

Book 117. Page 400

152 MANDATE FROM SUPREME COURT.

The State of Florida.

To the Honorable, the Judge of the Circuit Court for the Tenth Judicial Circuit of Florida, Greeting:

Whereas, Lately, in the Circuit Court of the Tenth Judicial Circuit of Florida, in and for the County of Polk, in a cause wherein George Andrews, was Plaintiff, and City of Winter Haven, a municipal corporation of the County of Polk, and State of Florida, was defendant, the Order of said Circuit Court was rendered June 23, 1941, as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the June Term of said Supreme Court holden at Tallahassee, A. D. 1941, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 13th day of September, A. D. 1941, it was considered by said Supreme Court that the said Order of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellee do have and recover of and from the Appellant its costs by it in this behalf expended, which

costs are taxed at the sum of Dollars;
therefore.

You Are Hereby Commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Order of the Circuit Court notwithstanding.

• Witness, the Honorable Armstead Brown, Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this 3rd day of October, A. D. 1941.

GUYTE P. McCORD,

Clerk, Supreme Court of
Florida,

By ELLA O'NIELL WILKINS,

D. C.

(Supreme Court Seal)

State of Florida,

County of Polk.

Filed for record this Oct. 6, 1941 at 9:51 A. M. Recorded in Chancery Order Book 117, Page 400, and Record Verified.

D. H. SLOAN, JR.,

Clerk, Circuit Court.

L. STIDHAM,

D. C.

219101-H-139. 418740. George Andrews vs. City of Winter Haven. Mandate. State of Florida, County of Polk. Filed for record this Oct. 6, 1941. Recorded in Chancery Order Book 117, Page 400. Record Verified. D. H. Sloan, Jr., Clerk Circuit Court. By L. Stidham, D. C.

State of Florida.

County of Polk.

I, D. H. Sloan, Jr., Clerk of the Circuit Court in and for Polk County, Florida, do hereby certify that I am the officer having the legal custody of the papers hereinafter referred to and that the above and foregoing is a true, correct and complete copy and transcript of the record on file in my office in that certain cause lately pending in the said Circuit Court, wherein George Andrews was plaintiff and City of Winter Haven, a municipal corporation of the County of Polk and State of Florida, was defendant, including all indorsements upon the respective papers filed in said cause.

In Witness Whereof, I have hereunto set my hand and seal of office, at Bartow, Florida, this 20th day of October, A. D. 1941.

D. H. SLOAN, JR.,

Clerk of the Circuit Court in
and for Polk County, Florida.

(Circuit Court Seal)

State of Florida.

County of Volusia.

On this day personally appeared before me Bettie Thomas, to me well known, who, being by me first duly sworn, deposes and says that she is employed in the law office of Hull, Landis & Whitehair, attorneys for the plaintiffs in the above styled cause, and that on the 14th day of March, A. D. 1942, at 10:15 o'clock, a. m., she served a true and correct copy of the above and foregoing Amendment to Complaint upon Mr. Henry Sinclair, the attorney of record for the defendants in said cause, by mailing a true copy thereof to him at his last known

address, said copy being enclosed in an envelope, bearing the requisite amount of uncanceled United States postage stamps, by depositing said envelope, containing such copy, properly sealed, stamped and addressed as given below, in the postoffice at DeLand, Florida, said envelope being addressed as follows:

Mr. Henry Sinclair,
Winter Haven, Florida.

BETTYE THOMAS.

Sworn to and subscribed before me this 14th day of March, A. D. 1942.

ELIZABETH GRAVES,

(Notarial Seal)

Notary Public, State of Florida.

My commission expires: May 4, 1945.

On the 14th day of April 1942, Default was entered in Civil Order Book 3 at page 590 in the following words and figures to-wit:

(Title Omitted.)

It appearing from the papers filed in this cause that an order was entered therein under date of the 7th day of March, A. D. 1942, wherein it was provided that the plaintiffs have ten days within which to amend the complaint previously filed, and that said complaint was amended on March 16th, 1942, by the filing of an amendment to said complaint, and it appearing from the affidavit attached to the Amendment to Complaint, filed in this cause on March 16th, 1942, that a copy of said Amendment to Complaint was served on March 14th, 1942, and it further appearing from the files in said cause

that the defendants have failed to plead to the complaint, and so amended, or to otherwise defend this action, as provided by the Federal Rules of Civil Procedure.

The default of the defendants, The City of Winter Haven, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, E. S. Horton, as Mayor-Commissioner of the said City of Winter Haven, John A. Snively, E. S. Horton, George Kennedy, K. T. Haynes, Sr., and E. R. Dantzler, as members of the City Commissioner of the said City of Winter Haven, W. W. Jamison, as City Manager of the said City of Winter Haven, and O. Roscoe Way, as City Auditor and Clerk of the said City of Winter Haven, and as ex officio Assessor of Taxes of the said City of Winter Haven, and as City Treasurer and Collector of the said City of Winter Haven, for failure so to do, is hereby entered.

Done and Ordered at Tampa, Florida, this 14th day of April, A. D. 1942.

(Seal)

EDWIN R. WILLIAMS,

Clerk of the United States District Court for the Southern District of Florida.

By ANNA M. MITCHELL,

Deputy Clerk.

On the 29th day of April 1942, Stipulation was filed in the following words and figures to-wit:

(Title Omitted.)

It is hereby stipulated and agreed by and between the undersigned counsel for the respective parties in the above entitled cause that the default heretofore entered

by the Clerk in said Court and cause, be vacated and set aside, and, further, that the Motion to Dismiss filed by the defendants to the original Complaint of the plaintiffs shall stand as the defendants' Motion against the plaintiffs' Complaint as amended.

HULL, LANDIS & WHITE
HAIR,

D. C. HULL,

Solicitors for the plaintiffs,

HENRY SINCLAIR,

Solicitor for the defendants.

On the 6th day of June 1942, the Court entered its Order in Civil Order Book 3 at page 787, in the following words and figures to-wit:

(Title Omitted.)

This matter coming on on motion to dismiss Plaintiff's complaint as amended, and the matter having been heard and considered by the Court, it is hereby

Ordered and Adjudged that the said motion to dismiss be and the same hereby is granted, and that the Defendants go hence without day. The costs of the case are assessed against the Plaintiff.

Done and Ordered in Chambers this 6th day of June,
A. D. 1942.

WILLIAM J. BARKER,
District Judge.

On the 7th day of July 1942, the Plaintiffs filed their Notice of Appeal in the following words and figures to-wit:

(Title Omitted.)

Notice is hereby given that the plaintiffs, W. J. Meredith, James G. Martin, and A. R. Ohmart, hereby appeal to the United States Circuit Court of Appeals for the Fifth Circuit from the order entered in this action on the 6th day of June, A. D. 1942.

HULL, LANDIS & WHITE-
HAIR,

D. C. HULL,

Attorneys for Appellants, W.
J. Meredith, James G. Mar-
tin and A. R. Ohmart.

Address: DeLand, Florida.

On the 7th day of July 1942, an Appeal Bond was filed in the following words and figures to-wit:

(Title Omitted.)

Know All Men By These Presents: That we, W. J. Meredith, James G. Martin and A. R. Ohmart, as Principals, and St. Paul Mercury Indemnity Company of Saint Paul, a corporation, a surety company duly authorized to transact business in the State of Florida, as Surety, are hereby held and firmly bound and obligated unto the City of Winter Haven, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, E. S. Horton, as Mayor-

Commissioner of the said City of Winter Haven, John A. Snively, E. S. Horton, George Kennedy, K. T. Haynes, Sr., and E. R. Dantzler, as members of the City Commission of the said City of Winter Haven, W. W. Jamison, as City Manager of the said City of Winter Haven, and O. Roscoe Way, as City Auditor and Clerk of the said City of Winter Haven, and as ex officio Assessor of Taxes of the said City of Winter Haven, and as City Treasurer and Collector of the said City of Winter Haven, in the sum of \$250.00, for the payment whereof well and truly to be made they do hereby bind themselves and their respective executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 24th day of June, A. D. 1942.

The condition of this obligation is that,

Whereas W. J. Meredith, James G. Martin, and A. R. Ohmart, the plaintiffs in this cause, are taking an appeal to the United States Circuit Court of Appeals for the Fifth Circuit, from the order dismissing this cause, rendered and entered in this cause, on the 6th day of June, A. D. 1942, in the District Court of the United States for the Southern District of Florida, Tampa Division, in which cause the said W. J. Meredith, James G. Martin and A. R. Ohmart are plaintiffs, and the City of Winter Haven, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, E. S. Horton, as Mayor-Commissioner of the said City of Winter Haven, John A. Snively, E. S. Horton, George Kennedy, K. T. Haynes, Sr., and E. R. Dantzler, as members of the City Commission of the said City of Winter Haven, W. W. Jamison, as City Manager of the said City of Winter Haven, and O. Roscoe Way, as City Auditor and Clerk of the said City of Winter Haven, and as ex officio Assessor of Taxes of the said City of Winter Haven,

and as City Treasurer and Collector of the said City of Winter Haven, are defendants.

Now, Therefore, if the said W. J. Meredith, James G. Martin and A. R. Ohmart shall prosecute their appeal to effect and answer all costs if they shall fail to make their plea good, and if they shall pay all costs if said appeal is dismissed or said order affirmed, or such costs as said United States Circuit Court of Appeals for the Fifth Circuit may award if said order is modified, then this obligation shall be void, otherwise the same is to remain in full force and effect.

W. J. MEREDITH. (Seal)

(W. J. Meredith)

JAMES G. MARTIN. (Seal)

(James G. Martin)

A. R. OHMART. (Seal)

(A. R. Ohmart)

As Principals,

ST. PAUL MERCURY INDEMNITY COMPANY OF SAINT PAUL,

As Surety,

By BURTON C. THORNAL,

(Corporate Seal) Its Attorney in Fact.

On the 11th day of July 1942, the Plaintiffs file their Designation of Contents of Record on Appeal in the following words and figures to-wit:

(Title Omitted.)

Appellants hereby designate for inclusion in the record on Appeal, the complete record and all the proceedings in this cause, to-wit:

1. The complaint and the exhibits thereto, attached, filed September 9, 1941.

2. The summons and the return of service indorsed thereon.

3. Motion of defendants to dismiss the complaint, together with the notice and affidavit thereto attached, filed September 27, 1941.

4. Order granting Motion to Dismiss, such Order being dated March 7, 1942.

5. Amendment to complaint, and the exhibits thereto attached, as well as the affidavit of service thereto, attached, filed March 16, 1942.

6. Default, entered April 14, 1942.

7. Stipulation of counsel, filed April 29, 1942.

8. Order granting motion to dismiss complaint, as amended, and that defendants go hence without day, such order being dated June 6, 1942.

9. Notice of appeal, filed July 7, 1942.

10. Appeal bond filed July 7, 1942.

11. This designation of contents of record on appeal, with affidavit of service thereof thereto attached.

HULL, LANDIS & WHITE
HAIR.

D. C. HULL.

Attorneys for Appellants, W.
J. Meredith, James G. Mar-
tin and A. R. Ohmart.

State of Florida.
County of Volusia.

On this day personally appeared before me, Elise Waters, to me well known, who, being by me first duly sworn, deposes, and says that she is employed in the law office of Hull, Landis & Whitehair, attorneys for the plaintiffs in the above styled cause, and that on the 10th day of July, A. D. 1942, at 3:45 o'clock P. M., she served a true and correct copy of the above and foregoing designation of contents of record on appeal upon Mr. Henry Sinclair, the attorney of record for the defendants in said cause, by mailing a true copy thereof to him at his last known address, said copy being enclosed in an envelope, bearing the requisite ~~amount of uncanceled United States postage stamps~~, by depositing said envelope, containing such copy, properly sealed, stamped and addressed as given below, in the postoffice at DeLand, Florida, said envelope being addressed as follows:

Mr. Henry Sinclair,
Winter Haven, Florida.

ELISE WATERS

Sworn to and subscribed before me this 10th day of July, A. D. 1942.

ELIZABETH GRAVES,

Notary Public, State of Florida.

(Notarial Seal Affixed)

My Commission expires May 4, 1945

CERTIFICATE OF CLERK.

United States of America,
Southern District of Florida,
Tampa Division, ss.

I, EDWIN R. WILLIAMS, Clerk of the District Court of the United States for the Southern District of Florida, do hereby certify that the foregoing pages numbered One to 161, both inclusive, contain and constitute a complete, true, and correct copy and transcript of the record of all the proceedings and matters as the same appear on file and of record in my office, that have been directed to be included and contained in the record on appeal by appellants' written designation, in the case of W. J. Meredith, James G. Martin, and A. R. Ohmart, Plaintiffs, versus The City of Winter Haven, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, et al., Defendants, Case Number 420 Civil Tampa. I further certify that the foregoing transcript of record contains all exhibits filed in said cause.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court at Tampa, Florida, on this the 24th day of July A. D. 1942.

EDWIN R. WILLIAMS.

As Clerk of the United States
District Court for the Southern
District of Florida.

By NETTIE TIDWELL,
Deputy Clerk.

(Seal)

[fol. 189] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of December 10, 1942

No. 10402

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART

versus

CITY OF WINTER HAVEN, et al.

On this day this cause was called, and, after argument by D. C. Hull, Esq., for appellants, and Giles J. Patterson, Esq., for appellees, was submitted to the Court.

[fol. 190] OPINION OF THE COURT AND DISSENTING OPINION OF SIBLEY, CIRCUIT JUDGE—Filed February 3, 1943

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 10402

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART,
Appellants,

versus

CITY OF WINTER HAVEN, et al., Appellees

Appeal from the District Court of the United States for the Southern District of Florida

(February 3, 1943)

Before Sibley, Hutcheson, and McCord, Circuit Judges

HUTCHESON, Circuit Judge:

Appellants are holders of City of Winter Haven general refunding bonds, issue of 1933. Alleging that the defendants were proposing to call the bonds for payment but re-

fusing to pay the deferred or accumulated interest as provided for therein, they brought this suit for a declaratory decree adjudicating and determining that this may not be [fol. 191] done, and an injunction restraining defendants from attempting to do so, and, in the alternative, if this relief may not be had, for a declaration that plaintiffs are entitled to be subrogated to, and assume, the position, as to principal and interest, of the holders of a like amount of the original indebtedness refunded by the bonds they hold. The defendants' motion to dismiss for failure of the complaint as amended to state a claim for relief was granted on the

¹ This, briefly stated, is the case the complaint as amended makes:

In July, 1933, the City of Winter Haven had an outstanding bonded indebtedness of approximately \$2,148,054.78, principal and interest.

The accumulated defaulted interest, as of April 1, 1933, was approximately \$195,000.00, and the defaulted principal amounted to around \$375,000.00, and the City had been in default in payment of its bonded indebtedness since 1931.

By a resolution adopted July 24, 1933, the City authorized the issuance of its General Refunding Bonds, Issue of 1933, dated April 1, 1933, for the purpose of refunding its outstanding bonded indebtedness.

The refunding issue was divided into Series "A" bonds, to be exchanged for the outstanding 6% obligations, and Series "B" bonds, to be exchanged for the outstanding 5½% obligations.

The originally outstanding bonds consisted chiefly of bonds which matured serially from 1930 to 1962.

The General Refunding Bonds, Issue of 1933, postponed all maturities, so as to make the bonds mature serially from April 1, 1948, and annually thereafter to April 1, 1963.

The authorizing resolution described in detail the outstanding bonds to be refunded and also specified the numbers, amounts and maturity dates of the 1933 refunding bonds to be issued and provided a definite scheme of exchange of new bonds for old bonds, so that it will always be possible for the holder of a General Refunding Bond, of the Issue of 1933, to identify the particular original indebtedness that was refunded by the particular 1933 bond which he holds.

authority of *Outman vs. Cone*, 192 Southern 611; *Taylor* [fol. 192] *vs. Williams*, 195 So. 175; *State vs. Special Tax School District of Pinellas County*, 197 So. 127, and *Andrews v. Winter Haven*, 3 So. (2) 805, and plaintiffs have

The General Refunding Bonds, Issue of 1933, were validated in statutory validation proceedings.

They were not sold on the open market, but were issued in exchange for a corresponding amount of original outstanding obligations of the city, in accordance with the authorizing resolution, which outstanding securities were cancelled and surrendered. The 1933 refunding bonds bore semi-annually maturing interest at the rate of $3\frac{1}{2}\%$ from April 1, 1933, to April 1, 1935, 4% from April 1, 1935, to April 1, 1936, $4\frac{1}{2}\%$ from April 1, 1936, to April 1, 1937, 5% from April 1, 1937, to April 1, 1943, and thereafter at the rate of 6 percent in the case of Series "A" bonds and $5\frac{1}{2}\%$ in the case of Series "B" bonds. The differential between the interest rate borne by the originally outstanding debt and the semi-annually maturing interest borne by the new refunding bonds for the ten-year period from April 1, 1933, to April 1, 1943, was referred to in the bonds as deferred interest. With the difference only of $5\frac{1}{2}\%$ in Series "B", the bonds contained the following provision: "if this bond shall not have been called and retired as hereinafter provided prior to maturity, the full interest at the rate of 6 percent per annum less the amount theretofore paid from the date hereof to said maturity date shall also at that time be enforceable, collectible and paid upon presentation and surrender of said bonds."

The originally outstanding bonds were non-callable bonds, each being payable on a definite maturity date, and were not subject to call for redemption prior to maturity.

The General Refunding Bonds, Issue of 1933, were callable bonds, the City reserving the right to call and redeem such bonds, "on any interest payment date, by paying a portion of the deferred interest, according to the following schedule:

On or prior to April 1, 1943, at par, and accrued interest at the rate then prevailing, plus one-half of the deferred or accumulated interest for the ten-year period.

On or prior to two years before the maturity of the respective bonds, and during the period of time from April

appealed. They make two contentions here. The first is that these decisions are contrary to the rule of law laid down in *Sullivan vs. Tampa*, 134 So. 211, and represent a change in decision since plaintiffs' bonds were issued, that the

1, 1943, to and including April 1, 1953, at par, and accrued interest at the rate then prevailing, plus three fourths of the deferred or accumulated interest for ten years.

From April 1, 1953, to and including April 1, 1963, the bonds could be called at par, and accrued interest at the prevailing rate, plus the full deferred or accumulated interest for ten years."

On December 22, 1939, the Supreme Court of Florida decided the case of *Outman v. Cone*, 192 So. 611, holding that a provision of payment of deferred interest at the original rate less previous payments where the refunding bonds had not been authorized by the freeholders was illegal and void.

Subsequent to the decision in *Outman v. Cone*, the City of Winter Haven authorized the issuance of new refunding bonds to refund its General Refunding Bonds, Issue of 1933, dated April 1, 1933, but repudiated all the provisions relative to deferred interest.

In the months of August and September, 1941, the City of Winter Haven published a notice purporting to call for redemption its General Refunding Bonds, issue of 1933, including bonds owned and held by the plaintiffs in this suit, without providing for the payment of any portion of the deferred interest.

On September 9, 1941, the appellants filed their complaint in the court below, showing that they were the holders of General Refunding Bonds, Issue of 1933, both Series "A" and Series "B" of the total amount of \$297,900.00.

On September 13, 1941, the Supreme Court of Florida, four days after the filing of the complaint in this suit, decided the case of *George Andrews v. City of Winter Haven*, reported in 148 Fla. 144, 3 So. (2) 805, holding the deferred interest provisions of the Winter Haven General Refunding Bonds, Issue of 1933, to be invalid and unenforceable.

As to this suit, plaintiff alleged that, the suit brought by persons having no interest really adverse to each other but for the purpose of obtaining a state court ruling to be used against plaintiffs in this suit was a collusive one, and the judgment and decision in it was not valid and binding as a precedent.

[fol. 193] district court, therefore, erred in determining the validity of the called provisions in plaintiffs' bond contract, in not applying the rule of law laid down in the *Sullivan* case rather than the contrary rule laid down in the later cases. The second point is that if the district judge was right in holding the deferred interest provisions of plaintiffs' bond contract to be illegal and unenforceable, he erred in holding that the plaintiffs were not entitled under Section 20² of the bond resolution to assume the position of holders of a like amount of the original indebtedness refunded thereby and as such to enforce their claim for payment. On the first point, appellants urge upon us that it is the law both in the Federal Court³ and in Florida⁴ that where the highest court of a State has placed a given construction on the state constitution, and municipal bonds are thereafter issued in accordance with and accepted in reliance upon such construction, the contract will be governed by the law as announced at the time of its making rather than by the law announced in later decisions of the Supreme Court of the State. On its second point, appellants urge that if the call provisions of the bond contract are invalid and unenforceable, then plaintiffs are entitled, both under the express provisions of Section 20 of the bond resolution and under general principles of equity to be subrogated both as to principal and unpaid interest to the position of the holders of the

²Section 20 of the resolution authorizing the issuance of these refunding bonds provided "if any of the bonds hereby authorized be adjudged illegal or unenforceable in whole or in part, the holders thereof shall be entitled to assume position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment.

³*Gelpeke v. City of Dubuque*, 1 Wallace, 175; *Ohio Life & Trust Co. v. DeBolt*, 16 Howard, 432; *Board of Public Instruction of Polk County v. Gillespe*, 81 Fed. (2) 586; *Board of Public Instruction vs. Lexington Co.*, 90 Fed. (2) 83; *Board of Public Instruction of Broward County v. Osburn*, 101 Fed. (2) 919, and *Meredith vs. Board of Public Instruction of Hernando County*, 112 Fed. (2) 914; same case 119 Fed. (2) 712.

⁴*Columbia County Commissioners v. King*, 13 Fla. 451; *Humphreys v. State*, 145 So. 858.

original bonds for which the refunding bonds were exchanged. Appellees, on their part, insist: that there is [fol. 194] no conflict between the *Sullivan* case and the later Florida cases; that the *Sullivan* case did not deal with a contract of this kind; that the later cases relied on by the district judge, as well as the still later case of *State vs. City of New Smyrna Beach*, 4 So. (2) 660, all distinguished the *Sullivan* case on its facts and expressly approved it; that the precise question here at issue, having been ruled by the Supreme Court of Florida in defendants' favor, the federal courts are bound to follow that ruling and may not, upon a finding of an apparent inconsistency between the earlier and later cases in the application to the facts of the controlling principle, enable a litigant in a federal court to obtain a result which he could not obtain in a state court. Appellees do not meet the second point head on with a denial of its correctness and an insistence that if the provisions for payment of the deferred or accumulated interest are held invalid, plaintiff would still not be entitled to subrogation to the original bonds. They do indeed insist that the second contention is unreasonable because if sustained it would give plaintiff considerably more accumulated or deferred interest than the refunding bonds themselves provide for and they do counter appellants' reliance upon the invoked provision of the second half of Section 20 by quoting the first half of it.⁵ But this is only *arguendo*. Their real position with reference to it is that it is not alleged that the city has denied or repudiated its liability upon the deferred interest coupons when they mature, and since they do not become payable until the maturity of the bonds, there can be no actual present controversy with reference to their validity, and, therefore, no right to a declaratory judgment with respect to it, and to plaintiffs' right to subrogation to the original bonds should these coupons be declared invalid. Appellants agree that the immediately present controversy between it and the city, which caused this suit to be filed, is in form not over what the city will do with respect

⁵ "If any clause, section, paragraph or provision of this resolution or of the General Refunding Bonds hereby authorized be declared unenforceable by any court of final jurisdiction, it shall not affect or invalidate any remainder thereof. . . ."

to the deferred or accumulated interest coupons when the bonds mature but over what it will do with them when the bonds are called. But they point out that in substance the controversy concerns itself with the validity and enforceability according to their terms, of provisions made in the bonds with respect to the deferred interest coupons, and of the provision of Section 20 for relief by subrogation, if the refunding bonds are held invalid in whole or in part. Arguing that if the city may call the bonds for payment without paying the coupons in accordance with the terms for their payment on call, it certainly will not, the bonds called and paid, be held to pay the coupons on the maturity date of the bonds, for they provide on their face for payment to the bearers on maturity of the bonds, "being the then enforceable, collectible and deferred interest . . . unless said bonds shall have been heretofore called for redemption" (underscoring supplied), they insist that their complaint presents an actual controversy with the city now ripe for determination and declaration, as to the validity of the deferred interest provisions of the bond, and as to the right of plaintiffs to subrogation if the coupons are held invalid. We agree with appellants that their complaint presented an actual controversy and therefore justiciable issues requiring determination and entitling plaintiffs to a declaratory judgment as to the controlling law of Florida with respect to the coupons, and that if plaintiffs are right in their view, they are entitled to a declaration in their favor and an injunction in support of the declaration. We think it plain, however, that this determination should be sought in the state rather than in the federal courts. No federal question, constitutional or otherwise, is presented. The jurisdiction is invoked purely on grounds of diversity. Every question presented for decision, including: whether the *Sullivan case, supra*, authorized the deferred interest coupons and the pro-[fol. 196] visions regarding them; whether if it does, the later decisions holding invalid the provisions for paying part of them on call, operate retrospectively⁶ to strike them

⁶ Snyder, Retrospective Operation of Overruling Decisions, Ill. Law Review, Vol. 35, page 121; Oklahoma Packing Co. v. Oklahoma Gas & Elec. Co., 60 Sup. Ct., 215; Cf. Chicot County Drainage Dist. v. Baxter State Bank, 60 Sup. Ct. 317.

down, or upon the "principle of reliance" do not do so; and whether if they do, plaintiffs are entitled to the subrogation they pray for; is a question of state cognizance to be determined under controlling state law. This being so, unless the jurisprudence of Florida, as it concerns these questions, has a settled cast both as to what has been decided and as to what is the state of permanence of the decided law, the federal court should hesitate to, indeed it should not, exercise the jurisdiction it undoubtedly has to proceed to determine them, but should decline it, leaving their decision to the state tribunals. Our examination of the state of the law in Florida on the matters in issue shows that it is not clear, settled and stable, but quite the contrary. In the *Sullivan* case, there was no question of deferred or accumulated interest coupons, none, therefore, of the proportion of them which could be paid in the event of call and redemption of the bonds before maturity, nor in the later cases which appellants claim are in conflict with it, was there any question as here of whether under Florida decisions, *Columbia County Commissioners vs. King*, *supra*; *State ex rel. Naveen vs. Greer*, 102 So. 739; *Humphreys vs. State*, *ex rel. Palm Beach Co.*, 145 So. 858; *Alta Cliff Co. v. Spurway*, 152 So. 731; *Lee v. Bond-Howell Lumber Co.*, 166 So. 733, the coupons should be held valid under the *Sullivan* case, notwithstanding the later rulings. The *Andrews* case, *supra*, did involve this same issue of bonds and it did hold invalid the bond provision for payment on call of part of the deferred interest coupons, but the question of their validity under "the principle of reliance" upon the doctrine of the *Sullivan* case was not presented to or [fol. 197] decided by the court, as it was not in any of the other cases appellees rely on. In addition, a careful reading of the Florida cases dealing with the validity of, contracts for refunding, and bonds refunded, without a vote of the people leaves us in considerable doubt as to what on these facts the law of Florida now is or will, be declared to be. Cf. *State vs. City of Fort Meyers*, 198 So. 814. Under the operation of *Erie v. Tompkins*, 304 U. S. 64, the doctrine of judicial precedent binds the federal courts as to state supreme court decisions much more rigidly than it

binds those courts as to their own decisions⁷ for there is no provision for taking a case from the federal courts to the state supreme court to obtain the overruling of a case badly decided there, as there is for its taking from inferior state courts. It, therefore, should be, it has been the rule of the federal courts where questions of state

⁷ "Erie v. Tompkins has now settled this. We have two hierarchies of courts, the federal system and the state system. In the federal system, the supreme court is supreme in all matters of federal law, and we have machinery by which that hierarchy can keep its decisions straight under the rule of precedent because machinery is provided for taking cases from the highest state to the highest federal court. In the state system, the supreme courts of the state are supreme, but because there is no provision for review by them of federal court decisions, when you are in the federal courts, and those courts decide that there is a state court precedent in your way, there is nothing you can do about it to get a state court ruling on the point. All you can do is go up to the top of the federal hierarchy, the Supreme Court of the United States. If that court incorrectly applies the state precedent or correctly applies a state precedent, which though it is a state precedent is yet bad law, though you know that when reconsidered in the supreme court of the state it will be overruled, there is nothing you can do about it for you cannot get a writ to the state supreme court to construe or overrule its own precedent. I think you should be able to. * * * If a case must be decided according to the law of the state, it ought to be decided according to what that law is, not merely what it seems to the federal courts to be. Especially in this day of general re-examination and overruling of precedents, I think litigants in the federal courts ought to have the right, in any case where there is a real, a substantial controversy over the existence or binding effect of a state precedent, to obtain in some way, the last considered judgment of the supreme court of the state, as to what really is the state law on the point." from "The Erie-Tompkins Case and the Doctrine of Precedent, Advance or Retreat", Joseph C. Hutcheson, in Vol. 14, University of Cincinnati Law Review, "Status of the Rule of Judicial Precedent", p. 275 & 6.

law involving provisions of statutes or of constitutions especially when dealing with matters of general public [fol. 198] concern in a particular state, to decline to determine the state law and to remit the litigant to the state courts for that determination, *U. S. ex rel. Horgan vs. Hayward*, 98 Fed. (2) 433; *Moran v. City of Stewart*, 111 Fed. (2) 773; *Caranaugh v. Looney*, 248 U. S. 453; *De-Giovanni v. Camden Ins. Ass'n*, 296 U. S. 64; *Gilcrist vs. Interborough*, 279 U. S. 159. We think it would be especially unwise here for the federal court to undertake in a declaratory judgment to determine the questions here presented for not only would it be undertaking to settle questions of state constitutional and statutory law affecting generally the fiscal affairs of municipalities and political subdivisions of the state which are by no means settled in the state courts, but it would be undertaking to declare the public policy of the state in respect of obligations of its municipalities in the light of an insistence that if those obligations are not valid, plaintiffs ought in equity to be subrogated to the position of earlier bond holders and the city be thereby more heavily burdened than it is burdened by the contract which plaintiffs seek to enforce. The suit seeks purely equitable relief, an injunction and subrogation. Especially in equity cases is it true that the federal courts, though possessing jurisdiction, will refrain from exercising it to determine state law, leaving the plaintiffs to the state courts. This the district judge should have done. *Railroad Comm. v. Pullman Co.*, 312 U. S. 496. The judgment is, therefore, reversed and the cause is dismissed without prejudice to plaintiffs' right to proceed in the state court as it may be advised to obtain determination of the questions here presented. Reversed and Dismissed without prejudice.

SIBLEY, Circuit Judge, Dissenting:

There being a presently acute justiciable controversy, I think we are bound to declare the rights of the parties, [fol. 199] though the grant of injunction is discretionary. The Constitution extends the judicial power of the United States to controversies between citizens of different States arising under the laws of a State, just as fully as to controversies arising under the Constitution and laws of the United States. There is the same power and the same duty

to decide both classes of cases. This case involves no invasion of high State functions or policies as to which caution is due, but only a question of how much this City owes these bondholders on calling their bonds for payment before due. Such questions have been decided by federal courts from the beginning.

Under presently prevailing rules of decision we must decide as the State Supreme Court has decided. On bonds of this same City and of this same issue that court has held that the provision for calling the bonds for payment before due is valid, but that part of the call provision which promises in that event to pay part of the deferred interest is invalid, but separable; so that the bond may be called but no deferred interest need be paid. *Andrews vs. City of Winterhaven*, 148 Fla. 144, 3 So. (2) 805. In that litigation in the trial court questions 2 and 6 proposed for declaratory decree related to this exact matter and were answered as above. The Supreme Court expressly affirmed the decree "in all respects". The decision was cited and relied on in *State vs. City of New Smyrna Beach*, 148 Fla. 482, 4 So. (2) 660. We are compelled to accept it as the law of Florida, though I do not see how the part payment of deferred interest which is the consideration for the City's privilege of calling the bonds can be denied effect when that privilege is itself upheld.

Justice can be done, however, in this case, for the resolution which authorized these refunding bonds, and declared itself to be a part of the refunding contract, provides: "If any of the bonds hereby authorized be adjudged illegal [fol. 200] or unenforceable in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such to enforce their claim for payment." Here a part of the new bond, that part which promises to pay one-half the deferred interest on call of the bond for payment at this time, is adjudged unenforceable. A just application of the agreement quoted is to remit the disappointed bondholder to his interest rights under the old bonds. Literally applied, it might entitle him to the full high rate up to the date of call, instead of only half of that which was deferred. In case of such a partial failure in effectiveness of the provisions of the new bonds, indemnity only ought to be afforded; that is to say, so much interest promised in the old bond ought to be paid as would make

good the loss caused by the partial unenforceability of the new bond. This question is not foreclosed by the decision in the *Andrews* case because the refunding resolution was not in that record and not considered by the court.

[fol. 201]

JUDGMENT

Extract from the Minutes of February 3, 1943

No. 10402

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART

versus

CITY OF WINTER HAVEN, et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Florida, and was argued by counsel:

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and the cause is dismissed without prejudice to plaintiffs' right to proceed in the state court as it may be advised to obtain determination of the questions here presented;

It is further ordered, adjudged and decreed that the appellees, City of Winter Haven, and others, be condemned, in solido, to pay the costs of this cause in this Court.

"Sibley, Circuit Judge, dissents."

[fols. 202-206] PETITION FOR REHEARING—Filed February
22, 1943

**In the United States Circuit
Court of Appeals**

FIFTH CIRCUIT

No. 10,402

**W. J. MEREDITH, JAMES G. MARTIN and
A. R. OHMART,**

Appellants,

versus

**THE CITY OF WINTER HAVEN, a municipal
corporation, et al.**

Appellees.

**ON APPEAL FROM THE DISTRICT COURT
OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF
FLORIDA**

PETITION FOR REHEARING

The Appellants in the above entitled cause respectfully represent that they have been aggrieved by the judgment of this Court, rendered in the above entitled cause, in the respects herein pointed out, and they respectfully petition this Court for a rehearing of said cause, upon the grounds hereinafter set forth.

I

The Court has apparently overlooked the fact that this is essentially a case involving the construction of a Federal statute, to-wit: Section 34 of the Federal Judiciary Act of September 24, 1789, C. 20, 28 U. S. C. Section 725, 28 U. S. C. A. Section 725.

II

The Court has apparently overlooked the fact that this is a case, involving the jurisdictional amount, between citizens of different states, in which the jurisdiction of the Federal Courts is invoked, in order to obtain a decision upon a question of federal law, or in other words to construe and apply a Federal statute, to-wit, Section 34 of the Federal Judiciary Act of September 24, 1789, C. 20, 28 U. S. C. Section 725, 28 U. S. C. A. Section 725.

III

The Court has apparently overlooked the fact that, in the case of *Erie Railroad Company v. Tompkins*, 304 U. S. 64, 58 Sup. Ct. 817, and in the later decisions following the doctrine announced there, the Supreme Court of the United States was construing a Federal statute, Section 34 of the Federal Judiciary Act of September 24, 1789, C. 20, 28 U. S. C. Section 725, 28 U. S. C. A. Section 725, which provides:

"The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

and that the jurisdiction of the Federal Courts has been invoked by appellants who seek to have the Federal Courts apply the principle announced by the Supreme Court of the United States in the case of *Gelpcke v. Dubuque*, 1 Wall. 175, and follow the law as judicially declared at the time of the making of

the contract involved, that is, to recognize and apply the "principle of reliance" or "contract exception," laid down in the Gelpcke case, and adopted by the Supreme Court of Florida, as a principle of substantive law, before the contract in question was made.

IV

The Court has apparently overlooked the fact that a Federal question is involved in this case, in that, the decisions of the Supreme Court of the United States, in the case of Erie Railroad Company v. Tompkins, 304 U. S. 64, 58 Sup. Ct. 817, and in the later decisions following the doctrine announced there, are themselves predicated upon a Federal statute prescribing the effect to be given to State laws, and the appellants in this case are seeking to have the Federal Courts apply the principle of the case of Gelpcke v. Dubuque, 1 Wall. 175, and follow the law as judicially declared at the time of the making of the contract involved, that is, to recognize and apply the "principle of reliance" or "contract exception," laid down in the Gelpcke case, and adopted by the Supreme Court of Florida, as a principle of substantive law, before the contract in question was made.

V

It appears that the Court has considered, sua sponte, matters which the appellants had no opportunity to argue, that is to say, the Court has decided to remit the appellants to their remedy in the state courts, even though the appellants, who are citizens of the State of Kansas, and who have shown the jurisdictional amount in controversy, have not had an opportunity to insist that their contract rights be adjudicated in the Federal Courts.

VI

It appears that the Court has overlooked the fact that the question involved in this case is a matter of the contract rights of the appellants, and that the decisions cited in the majority opinion in this case,

in support of the action of this Court in remitting the appellants to their remedy in the state courts, are essentially different from this case, in the following respects:

1. In the case of *Cavanaugh v. Looney*, Attorney General, et al., 248 U. S. 453, 39 Sup. Ct. 142, certain citizens of a state applied to the Federal Court to enjoin a high official of the State from suing in the State Court to condemn private property for public use, such plaintiffs seeking to invoke the Federal jurisdiction on the theory that the State Courts might deny them of a Federal right.

2. In the case of *Gilcrist v. Interborough Rapid Transit Co.*, 279 U. S. 159, 49 Sup. Ct. 282, a New York corporation applied to the Transit Commission of the State of New York for increased rates, and when its application had been denied, it then applied to the Federal Court to enjoin the Transit Commission from taking or prosecuting proceedings in the State Court to enforce the old rates, in the face of the fact that, under applicable statutes under which the corporation's franchises were granted, the corporation could not have resorted to a Federal Court without first applying to the Transit Commission.

3. In the case of *Di Giovanni v. Camden Insurance Association*, 296 U. S. 64, 56 Sup. Ct. 1, an insurance company applied to a Federal Court to cancel two insurance policies (neither of which exceeded \$3000.00 in amount), which policies were alleged to have been fraudulently obtained, the plaintiff seeking to invoke the equitable jurisdiction of the Federal Court by the expedient of asserting that the avoidance of a multiplicity of suits was sought.

4. In *Railroad Commission v. Pullman Co.*, 312 U. S. 496, 61 Sup. Ct. 643, it was held that "the case touches a sensitive area of social policy upon which the Federal courts ought not to enter unless no alternative to its adjudication is open."

5. In the case of *Morin v. City of Stuart*, 111 Fed. (2nd) 1773, the Court recognized that the appropriate, if not indeed the exclusive remedy, for ousting a municipality chartered by the state from jurisdiction allegedly usurped by the municipality is a proceeding in quo warranto, such having been always recognized as a function reserved to the states themselves, through the action of the Attorney General of the State.

6. In the case of *U. S. ex rel. Horigan v. Fleward, Mayor, et al.*, 98 Fed. (2nd) 433, it was held that an inquiry into the very existence of a municipality is in general reserved to the state itself in a direct proceeding by quo warranto.

Copies of this petition have been served upon opposing Counsel.

D. C. HULL
 ERSKINE W. LANDIS
 JOHN L. GRAHAM
 J. COMPTON FRENCH
 Attorneys for Appellants

I, D. C. Hull, an attorney regularly admitted to practice in the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the above and foregoing petition is presented in good faith and not for delay, and that in my opinion it is well founded.

D. C. HULL
 One of the Attorneys for
 Appellants.

[fol. 207] ORDER DENYING REHEARING

Extract from the Minutes of March 12, 1943

No. 10402

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART
versus

CITY OF WINTER HAVEN, et al.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

"Sibley, Circuit Judge, dissents."

[fol. 208] MOTION AND ORDER STAYING MANDATE—Filed
March 22, 1943

IN THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH
CIRCUIT

No. 10,402

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART,
Appellants,

versus

THE CITY OF WINTER HAVEN, a Municipal Corporation, et al.,
Appellees

On Appeal from the District Court of the United States for
the Southern District of Florida

APPLICATION FOR STAY OF MANDATE

The appellants in the above entitled cause respectfully represent that they desire to petition the Supreme Court of the United States to review the judgment of this Court, and to that end, they propose to speedily prepare and file with the Supreme Court of the United States a petition for a writ of certiorari, and that to do so will involve the preparation of a petition and brief in support thereof, [fol. 209] and the printing of said petition and supporting brief, as well as parts of the record in this cause.

The appellants also represent that, unless this Court withholds its mandate, the dismissal of this cause in the District Court, in accordance with the judgment of this Court, would promptly follow.

The appellants further represent that the City of Winter Haven has caused to be published in *The Bond Buyer*, a financial paper published in the City of New York, a Notice of Redemption, in which it is stated that all City of Winter Haven General Refunding Bonds, dated April 1, 1933, Series "A" and Series "B", which may be still outstanding as of April 1, 1943, have been called for redemption and payment on April 1, 1943, at par plus that accrued interest evidenced by coupons *due on that date, upon presentation with all subsequent unmatured coupons thereto attached*, thus making no provision for paying any part of the "deferred interest" called for by the bond contract, and unless this Court withholds its mandate, the rights of the appellants will be seriously jeopardized.

The appellants further represent that the parties to this cause are now endeavoring to work out a settlement of this litigation, and that in the meantime the rights of the appellants ought not to be jeopardized by the going down of the mandate in this cause.

The appellants believe that, in view of the fact that this case involves the application of the doctrine announced in [fol. 210] the case of *Eric Railroad Company vs. Tompkins*, 304 U. S. 64, 58 Sup. Ct. 817, and the doctrine announced in the case of *Gelpeke vs. Dubuque*, 1 Wall. 175, and adopted by the Supreme Court of Florida before the making of the contract involved, and in view of the fact that this case involves contract rights acquired in reliance upon the law as judicially declared by the Supreme Court of the State of Florida at the time of the making of the contract and before the decision of the Supreme Court of the United States in the *Eric* case, certiorari ought to be granted.

The appellants, therefore, hereby apply to this Court to enter an order staying its mandate for a suitable reasonable time—say 60 days—to afford the appellants an opportunity to prepare and file their petition and supporting brief, and to have prepared and filed with the Supreme Court of the United States the printed record in this cause, and to order that, if within said time said record and petition shall have been lodged with the Supreme Court of the United States

and a certificate to that effect from the Clerk of the Supreme Court of the United States shall be obtained and filed with this Court; then the said mandate be automatically further stayed until the Supreme Court of the United States shall have acted upon such petition.

Copies of this application have been served upon opposing counsel.

D. C. Hull, Erskine W. Landis, John L. Graham,
J. Compton French, Attorneys for Appellants.

[fol. 211] STATE OF FLORIDA,
County of Volusia:

On this day personally appeared before me D. C. Hull, who, being by me first duly sworn, deposes and says that he is one of the attorneys for the appellants in the above entitled cause, that the foregoing application is presented in good faith, and that it is the purpose of the appellants to petition the Supreme Court of the United States for a writ of certiorari as set forth in the above application.

D. C. Hull.

Sworn to and subscribed before me this 18th day of March, A. D. 1943. Elizabeth Graves, Notary Public, State of Florida at Large. My Commission Expires: May 4, 1945 (Notarial Seal.)

[fol. 212] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH DISTRICT

No. 10402

W. J. MEREDITH, JAMES G. MARTIN and A. B. OHMART,
Appellants,

versus

CITY OF WINTER HAVEN, et al., Appellees

On Consideration of the Application of the applicants in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellants to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of

the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, record and brief have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 22nd day of March, 1943.

(Signed) J. C. Hutcheson, Jr., United States Circuit Judge.

[fol. 213] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 213] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 24, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

923 10

IN THE

Supreme Court of the
United States

APR 11 1942
CHARLES L. RICH

OCTOBER TERM 1942

W. J. MEREDITH, JAMES G. MARTIN and A. R.
OHMART,

Petitioners,

versus

THE CITY OF WINTER HAVEN, a municipal cor-
poration, et al.

Respondents.

PETITION FOR WRIT OF CERTIORARI
AND SUPPORTING BRIEF

D. C. HULL
ERSKINE W. LANDIS
JOHN L. GRAHAM
J. COMPTON FRENCH
Attorneys for Petitioners

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SUBJECT INDEX

Topic	Page
Petition for Writ of Certiorari	1
Statement of Matters Involved	1
Basis of the Supreme Court's Jurisdiction	13
Questions Presented	13
Reasons Relied on for Allowance of Certiorari	16
Prayer for Writ of Certiorari	18
Brief in Support of Petition	19
Opinions Below	19
Statement of Grounds on Which Jurisdiction is Invoked	19
Statement of the Case, Questions, and Specifica- tions of Errors	19
Argument	19
Appendix—"Retrospective Operation of Overruling Decisions"	i
Exceptions to Retrospective Operation	i
Basis of the Contract Exception	iii
Collapse of a Constitutional Basis	iv
Real Basis of the Exceptions	vi

TABLE OF AUTHORITIES CITED

Cases	Page
Alta Cliff Co. v. Spurway	
113 Fla. 633, 152 So. 731	23, 27
Andrews v. Winter Haven, City of.	
148 Fla. 144, 3 So. (2nd) 805	9, 10, 12, 13, 22, 28, 29
Columbia County Commissioners v. King.	
13 Fla. 451	12, 23, 27
Erie Railroad Co. v. Tompkins.	
304 U. S. 64, 58 Sup. Ct. 817; 82 L. Ed. 1188	11, 12, 16, 23, 26, 27
Gelpeke v. Dubuque, City of.	
1 Wall (U.S.) 175	12, 14, 15, 16, 17, 23, 24, 26, 31
Humphreys v. State ex rel. Palm Beach Co.	
108 Fla. 92, 145 So. 858	23, 27
Jefferson County v. Hawkins, Trustee.	
23 Fla. 223, 2 So. 362	29
Lee v. Bond-Howell Lumber Co.	
123 Fla. 202, 166 So. 733	23, 27
Outman v. Cone	
141 Fla. 196, 192 So. 611	8, 22
State v. Sarasota County.	
118 Fla. 629, 159 So. 797	4
State v. Special Tax School Dist. No. 5.	
107 Fla. 93, 144 So. 356	7, 10
State ex rel. Gillespie v. Walthal.	
124 Fla. 866, 169 So. 552	30
State ex rel. Nuveen v. Greer.	
88 Fla. 249, 102 So. 739	23, 27
Sullivan v. Tampa, City of.	
101 Fla. 298, 134 So. 211	5, 7, 10, 12, 21, 22, 27
 Legal Publications	
Illinois Law Review, Vol. 35, Page 121	24, 26
Retrospective Operation of Overruling Decisions (Snyder)	24, 26

TABLE OF AUTHORITIES CITED (continued)

Statutes and Constitutional Provisions	Page
Amendment to Sec. 6, Art. IX, Florida Constitution.....	5
	7, 20, 21
Chapter 11855, Laws of Florida, Acts of 1927.....	7, 21
Chapter 15772, Laws of Florida, Acts of 1931.....	7, 21
Compiled General Laws of Florida, Sec. 87.....	25
Compiled General Laws of Florida, Sec. 5106, et seq.....	3
Federal Judiciary Act, Sec. 34.....	15, 17, 30
Florida Constitution, Sec. 6, Art. IX, (original).....	19
Florida Constitution, Sec. 6, Art. IX, (amended).....	20
General Refunding Act of 1927.....	7, 21
General Refunding Act of 1931.....	7, 21
Judicial Code, Sec. 240 (a).....	13, 19
Revised General Statutes of Florida, Sec. 71.....	25
Revised General Statutes of Florida, Sec. 3296, et seq. .	2
United States Code Annotated, Title 28, Sec. 347(a) .	13, 19
United States Code Annotated, Title 28, Sec. 725.....	16
	17, 30

In the Supreme Court of the United States

OCTOBER TERM 1942

W. J. MEREDITH, JAMES G. MARTIN and A. R.
OHMART,

Petitioners,

versus

THE CITY OF WINTER HAVEN, a municipal cor-
poration, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

Your petitioners above named, who sued the respondents in the District Court of the United States for the Southern District of Florida, respectfully pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit, entered February 3, 1943, in the case identified on its docket as W. J. Meredith, James G. Martin and A. R. Ohmart, appellants, versus The City of Winter Haven, et al., appellees, No. 10,402, (R. 200), a petition for the rehearing of which judgment was denied March 12, 1943 (R. 206).

STATEMENT OF THE MATTERS INVOLVED

In July, 1933, the City of Winter Haven had an outstanding bonded indebtedness of approximately \$2,148,054.78, principal and interest (R. 3, 4, 27).

The accumulated defaulted interest, as of April 1, 1933, was approximately \$195,000.00, and the defaulted principal amounted to around \$375,000.00, and the City had been in default in payment of its bonded indebtedness since 1931 (R. 4).

By a resolution adopted July 24, 1933, the City authorized the issuance of its General Refunding Bonds, Issue of 1933, dated April 1, 1933, for the purpose of refunding its outstanding bonded indebtedness (R. 27-84).

The refunding issue was divided into Series "A" bonds, to be exchanged for the outstanding 6 per cent. obligations, and Series "B" bonds, to be exchanged for the outstanding 5½ per cent obligations (R. 4).

The originally outstanding bonds consisted chiefly of bonds which matured serially from 1930 to 1962 (R. 28-57, 64 and 65).

The General Refunding Bonds, Issue of 1933, postponed all maturities to April 1, 1948, and serially thereafter to April 1, 1963 (R. 5, 11).

An amendatory resolution, adopted March 7, 1934, changing the denominations of certain refunding bonds so as to provide for a more convenient exchange with the holders of outstanding obligations in odd amounts, appears on pages 86 to 93 of the Record.

The authorizing resolution described in detail the outstanding bonds to be refunded (R. 28-57 & 64-65), and also specified the numbers, amounts and maturity dates of the 1933 refunding bonds to be issued (R. 58 & 66), and provided a definite scheme of exchange of new bonds for old bonds, so that it will always be possible for the holder of a General Refunding Bond, of the Issue of 1933, to identify the particular original bond that was refunded by the particular 1933 bond which he holds (R. 19 & 82).

The General Refunding Bonds, Issue of 1933, were validated in statutory bond validation proceedings, under the provisions of Sections 3296, et seq., Revised General

Statutes of Florida, Sections 5106, et seq., Compiled General Laws.

They were not sold on the open market, but were issued in exchange for a corresponding amount of original outstanding obligations of the City, in accordance with the authorizing resolution, which outstanding securities were cancelled and surrendered (R. 21).

As has been stated, the original outstanding debt bore interest at the rate of 6 per cent and $5\frac{1}{2}$ per cent, respectively. The 1933 refunding bonds bore semi-annually maturing interest at the rate of $3\frac{1}{2}$ per cent from April 1, 1933 to April 1, 1935, 4 per cent from April 1, 1935 to April 1, 1936, $4\frac{1}{2}$ per cent from April 1, 1936 to April 1, 1937, 5 per cent from April 1, 1937 to April 1, 1943, and thereafter at the rate of 6 per cent in the case of Series "A" bonds (R. 7) and $5\frac{1}{2}$ per cent in the case of Series "B" bonds (R. 13). The differential between the interest rate borne by the original outstanding debt and the semi-annually maturing interest borne by the new refunding bonds for the ten-year period from April 1, 1933, to April 1, 1943, was referred to in the bonds as deferred interest (R. 7 & 13). Payment of the deferred interest was postponed to the final maturity of the refunding bonds, except as hereinafter stated (R. 7, 13 & 75).

The originally outstanding bonds were non-callable bonds, each being payable on a definite maturity date, and were not subject to call for redemption prior to maturity (R. 3).

The General Refunding Bonds, Issue of 1933, were callable bonds, the City reserving the right to call and redeem such bonds, on any interest payment date, by paying a portion of the deferred interest, according to the following schedule:

On or prior to April 1, 1943, the bonds could be called at par, and accrued interest at the rate then prevailing, plus one-half of the deferred or accumulated interest for the ten-year period.

On or prior to two years before the maturity of the respective bonds, and during the period of time from April 1, 1943 to and including April 1, 1953, at par, and accrued interest at the rate then prevailing, plus three-fourths of the deferred or accumulated interest for ten years.

From April 1, 1953, to and including April 1, 1963, the bonds could be called at par, and accrued interest at the prevailing rate, plus the full deferred or accumulated interest for ten years. (R. 7, 13, 73 & 74).

Thus the holders of the originally outstanding bonds were induced to surrender their non-callable obligations and to accept in lieu thereof bonds which could be called for redemption by the City, at any time that the City might be able to take advantage of a "cheap money market" by selling new bonds and using the proceeds of such sale to call and retire the 1933 refunding bonds prior to their contract maturity dates.

In the event that the City should exercise its option to call the refunding bonds at a time when low interest rates might prevail, the refunding bondholders would of course be forced to re-invest their funds in a low interest market.

It is common knowledge that a call provision renders municipal bonds less desirable from the standpoint of long-term investors, such as insurance companies and savings banks, and tends to depreciate their market value and to hamper their ready negotiation or sale, as has been judicially noticed by the Florida Supreme Court in the case of **State v. Sarasota County**, 118 Fla. 629, 159 So. 797, decided in 1935.

As a consideration for accepting a bond with such a callable feature, it was provided that the bondholder would not completely sacrifice his right to interest at the former contract rate of 5½ or 6 per cent, but would recover, to some extent, the difference between the interest borne by the original non-callable bonds surrendered and the reduced rate of semi-annually maturing interest borne

by the 1933 General Refunding Bonds containing the call provision.

Prior to the issuance of the City of Winter Haven General Refunding Bonds, Issue of 1933, there were no decisions of the Florida Supreme Court indicating that an issue of refunding bonds not authorized at a freeholder election must bear a lower rate of interest than the bonds refunded, and no decisions of that court that threw any doubt upon any of the provisions of the Winter Haven General Refunding Bonds.

On the other hand, the Florida Court in the case of **Sullivan v. City of Tampa, 101 Fla. 298, 134 So. 211**, decided in 1931, upheld an issue of refunding bonds of the City of Tampa, bearing interest at the rate of 5½ per cent per annum, that were issued to refund a like amount of 5 per cent bonds.

Mr. Justice Brown, speaking for the Court, in an opinion unanimously concurred in, discussed at great length the contention raised by the intervening appellant taxpayer that the City of Tampa could no longer issue refunding bonds, bearing a higher rate of interest than the obligations to be refunded, without the issuance of such refunding bonds having been first approved by a majority vote of the freeholder electors of the municipality, because of the provisions contained in amended **Section 6, of Article IX, of the Florida Constitution**, adopted at the general election held November 4, 1930.

The Court held that the constitutional amendment did not deprive a municipality of the power to issue refunding bonds at a rate of interest greater than the rate borne by the obligations to be refunded, without a freeholder vote, saying, at pages 217 and 218 of 134 So.:

"The constitutional amendment unquestionably authorizes the issuance of refunding bonds without a vote of the people, and this court would not be authorized to add to the language of the constitutional amendment a condition not therein expressed; that is, by addition of a provision that

such refunding should not be permitted unless the refunding bonds should bear no higher rate of interest than the original obligations * and should not be sold for less than their full par. value. It is the function of this court to construe and interpret constitutional amendments and not to make them. The constitutional amendment plainly provides for the issuance of refunding bonds issued exclusively for the purpose of refunding the bonds or the interest thereon of such counties, districts, or municipalities. The dictionary meaning of the word 'refund' is 'to fund again or anew; to replace (a fund or loan) by a new fund.' It is also a matter of common knowledge that refunding obligations cannot always be accomplished without holding out to the creditor some inducement in the form of an increase in the rate of interest or otherwise, which would cause him to be willing to surrender his existing bonds and take the refunding bonds instead. . . .

"It will be noticed that the only limitation upon the power of counties, districts, and municipalities to issue refunding bonds which is contained in the constitutional amendment is that such bonds be issued exclusively for the purpose of refunding the bonds or the interest thereon of such counties, districts or municipalities. The constitutional provision contains no express language which purports to fix or limit the rate of interest which the refunding bonds shall bear, or to fix the price at which they may be sold. Being wholly silent as to such matters, and no such limitations being clearly implied from the use of the terms in the amendment itself, none will be implied by the court. . . . It is quite probable that the difference between the amount which may be realized from the sale of the

* Note: Emphasis has been supplied in some of the quotations in this petition.

refunding bonds and the amount of the original obligations which are to be refunded must be paid out of the general funds of the city, but if this is done it will not increase the bonded debt of the city."

The bonds then under consideration were being issued under the authority of the **General Refunding Act of 1927, Chapter 11855, Acts of 1927.**

Subsequent to the decision in the case of **Sullivan v. City of Tampa**, the Legislature enacted the **General Refunding Act of 1931, Chapter 15,772, Acts of 1931**, with provisions similar to those of the **General Refunding Act of 1927**, including the provisions that interest on refunding bonds should not exceed 6 per cent, and that the refunding bonds should not be sold for less than 95 per cent of their par value, which provisions had been construed, upheld and applied in the **Sullivan case.**

Thereafter, in October, 1932, the Supreme Court of Florida decided the case of **State v. Special Tax School District, No. 5, of Dade County**, 107 Fla. 93, 144 So. 356.

In that case, a school district had outstanding bonds, issued in 1926. They were to mature within thirty years from the date of issuance, as required by another section of the Constitution. It was held that the district might issue refunding bonds, in 1932, which need not mature within thirty years from the year 1926, as prescribed for the original bonds, but that the maturities of the refunding bonds might extend beyond the period of thirty years from 1926, and that no freeholder election to authorize the issuance of such refunding bonds was required, although it was recognized that such an extension of maturities would add to the total interest burden to be borne by the district.

On December 22, 1939, nine years after the amendment to **Section 6 of Article IX** of the **Florida Constitution**, and more than eight years after the decision in the case of **Sullivan v. City of Tampa**, and more than six years after the adoption of the resolution authorizing the

issuance of the City of Winter Haven General Refunding Bonds, Issue of 1933, and several years after the 1933 bonds had been exchanged for the originally outstanding bonds of the City of Winter Haven, the Supreme Court of Florida decided the case of **Outman v. Cone**, 141 Fla. 196, 192 So. 611.

In that case, the Florida Court did what in the **Sullivan case**; it had held it could not do, namely, it read into the constitutional amendment, by implication, a provision to the effect that a refunding bond not authorized at a freeholder election must bear a lower rate of interest than the bond refunded; otherwise, the necessary expense of refunding, added to the existing interest rate, would increase the obligation of the bond and prevent the bond from being such a refunding bond as is contemplated by the provision of the constitutional amendment permitting only refunding bonds to be issued without an approving election.

The court therefore held that a provision for the payment of deferred interest at the original rate, less previous payments, where the refunding bonds had not been authorized by the freeholders, was illegal and void.

Subsequent to the decision in **Outman v. Cone**, the City of Winter Haven authorized the issuance of new refunding bonds to refund its General Refunding Bonds, Issue of 1933, dated April 1, 1933, but repudiated all the provisions of the 1933 bonds relative to deferred interest (R. 22, 23).

In the months of August and September, 1941, the City of Winter Haven published a notice purporting to call for redemption its General Refunding Bonds, Issue of 1933, including bonds owned and held by the present petitioners, without providing for the payment of any portion of the deferred interest (R. 23, 97).

On September 9, 1941, petitioners filed their complaint in the District Court, showing that they were the holders of General Refunding Bonds, Issue of 1933, both

Series "A" and Series "B", of the total amount of \$297,900.00 (R. 22, 94-96).

By their complaint, the petitioners sought to establish their right to the payment of deferred interest, as provided in their bond contract (R. 24).

In the event that the Court should hold that the deferred interest provisions of the 1933 bonds were invalid, then petitioners sought to be subrogated to the rights of the holders of the original bonds which had been surrendered for the 1933 refunding bonds.

In seeking this alternative relief, petitioners relied upon the provisions of the resolution authorizing the 1933 refunding bonds to the effect that if any of the 1933 refunding bonds should be adjudged illegal or unenforceable, in whole or in part, the holders thereof should be entitled to assume the position of holders of a like amount of the indebtedness thereby provided to be refunded and as such to enforce their claim for payment (R. 20, 83).

On September 13, 1941, the Supreme Court of Florida, four days after the filing of the complaint in this suit, decided the case of **George Andrews v. City of Winter Haven**, reported in 148 Fla. 144, 3 So. (2nd) 805, holding the deferred interest provisions of the Winter Haven General Refunding Bonds, Issue of 1933, to be invalid and unenforceable.

However, the provision of the resolution under which a bondholder should be subrogated to the position of a holder of the original bonds, in the event the refunding bond contract should be declared invalid or unenforceable, in whole or in part, was not called to the attention of the Florida Courts.

Thereafter, on September 27, 1941, the City of Winter Haven and its defendant officials filed their motion to dismiss the complaint in this cause, on the ground that the questions of law involved had been determined by the Supreme Court of Florida adversely to the petitioners (R. 98).

The District Court granted the motion to dismiss and allowed the petitioners to amend their complaint (R. 100).

Thereafter, petitioners amended the complaint so as to demonstrate that the **Andrews case**, although purportedly brought by a bondholder, for the purpose of establishing the validity of the deferred interest provisions of the City of Winter Haven 1933 refunding bonds, was in fact brought for the purpose of invalidating the deferred interest provisions. The amendment showed that Andrews was a substantial property owner and taxpayer of the City of Winter Haven, whose property holdings were at least as extensive as his purported bond holdings (R. 102-103). The amendment further showed that no process had been issued in the **Andrews suit**, but that all the pleadings of all the parties had been filed, the argument held, and the decree signed and filed, in the course of a single morning (R. 103, 105), as demonstrated by a certified transcript of the record of the proceedings in the **Andrews suit** attached to the amendment as an exhibit (R. 109-179). The amendment further showed that the briefs filed in behalf of George Andrews, purporting to protect the interests of the bondholders of the City of Winter Haven, made no reference to the cases of **Sullivan v. City of Tampa**, and **State v. Special Tax School District No. 5 of Dade County**, or any other cases which had been decided by the Supreme Court of Florida prior to the time of the issuance of the Winter Haven General Refunding Bonds, Issue of 1933, and that no effort whatever had been made on behalf of George Andrews to direct the attention of the Florida Supreme Court to the fact that it had announced and declared a contrary principle of law, prior to the time when the Winter Haven refunding bonds were issued, or to invoke the doctrine of both the State and Federal courts that the law to be applied in considering a contract is the law which existed or had been judicially declared at the time when the contract was made (R. 105-107).

By stipulation of counsel, the motion to dismiss the original complaint in the present case was made applicable

to the complaint as amended, the respondents thereby admitting as true the facts set out in the complaint and in the amendment (R. 181; 182).

The defendants took the position that, under the doctrine of **Erie Railroad Company v. Tompkins**, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188, and subsequent cases, the Federal Court was bound to follow the latest decisions of the Supreme Court of Florida in determining the validity of the deferred interest provisions, and that the petitioners were not entitled to assume the position of holders of the original bonds and as such to enforce the original interest rate, on the ground that the 1933 refunding bonds had not been invalidated as a whole, but that the deferred interest provisions had been declared to be a severable portion of the bond contract which could be invalidated without affecting the validity of the remainder of the contract.

The petitioners contended that the law to be applied by the Federal Court was the law of Florida as it had been announced and declared by the Supreme Court of Florida at the time when the bonds were issued, and that the Florida Supreme Court, itself, had held it to be the law in Florida that the rule of decision to be applied in considering a contract is the rule announced prior to the making of the contract, in reliance upon which the contract was made; even though the Court, after the making of the contract, has reached a different decision.

The petitioners further contended that the language of the resolution authorizing the bonds clearly entitled the petitioners to assume the position of holders of a like amount of the original bonds and as such to enforce their claim for payment, in the event that any part of the refunding bond contract should be adjudged illegal or unenforceable (R. 20).

On June 6, 1942, the District Judge dismissed the complaint, as amended, and ordered that the defendants go hence without day; and thus finally disposed of the litigation in the District Court (R. 182).

From that order an appeal was taken.

The present petitioners assigned as error the action of the District Court in not following the case of **Sullivan v. City of Tampa**, 101 Fla. 298, 134 So. 211, the Florida Court having previously adopted and followed the "principle of reliance" upon former decisions as announced in **Gelpcke v. Dubuque**, 1 Wall. 175, (See **Columbia County Commissioners v. King**, 13 Fla. 451).

Petitioners also specified error in that, after holding the deferred interest provisions of the bond contract to be illegal or unenforceable, the District Court further held that the petitioners were not entitled to assume the position of holders of a like amount of the bonds refunded and as such enforce their claim for payment.

The Circuit Court took the view, erroneously as we contend, that no Federal question, constitutional or otherwise, was presented. It decided that the state of the law in Florida on the matters in issue is not clear, settled and stable, and that the Federal courts, though possessing jurisdiction, should decline to exercise it, leaving the petitioners to their remedy in the State courts. Accordingly, the Circuit Court reversed the judgment of the District Court and dismissed the cause, without prejudice to petitioners' right to proceed in the State court. (R. 200).

Judge Sibley filed a dissenting opinion in which he took the position that, there being a presently acute justiciable controversy, the Federal Court was bound to declare the rights of the parties, since the same power and the same duty to decide cases applies to cases between citizens of different states arising under the laws of a state as applies to controversies arising under the Constitution and laws of the United States, and since this case involves no invasion of high state functions or policies as to which caution is due, but only the question of how much this City owes these bondholders on calling their bonds for payment before due.

Judge Sibley apparently thought, however, that the doctrine announced in **Erie Railroad Company v. Tomp-**

kins, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188, required the Court to follow the **Andrews case** and hold invalid the provision for payment of a part of the deferred interest on call of the bonds, but that justice should be done by remitting the bondholder to his interest rights under the old bonds to the extent necessary to make good the loss caused by the partial unenforceability of the new bonds. (R. 198).

On February 22, 1943, a petition for rehearing (R. 201) was filed by appellants (petitioners herein), in which they insisted, among other things, that a Federal question is involved, and in which they insisted also that the Circuit Court had considered, sua sponte, matters which the appellants (petitioners) had had no opportunity to argue, and had decided to remit them to their remedy in the State courts, even though the appellants (petitioners), who were citizens of another state and had shown the jurisdictional amount in controversy, had not had an opportunity to insist that their contract rights be adjudicated in the Federal courts, and that the decisions cited in the majority opinion to support the action of the Court in remitting them to their remedy in the State courts are essentially different from this case.

On March 12, 1943, an order denying the petition for rehearing was entered (R. 206).

BASIS OF THE SUPREME COURT'S JURISDICTION

It is contended that the Supreme Court of the United States has jurisdiction, under **Section 240 (a)** of the **Judicial Code**, as amended, **Title 28, U. S. C. A., Section 347 (a)**, to review the judgment.

QUESTIONS PRESENTED

The following questions are presented:

1. Where plaintiffs show by their complaint filed in a Federal Court that they are citizens of the State of

Kansas, that defendants are citizens of the State of Florida, that the jurisdictional amount is involved; that there is an actual controversy presenting justiciable issues requiring determination and entitling plaintiffs to a declaratory judgment and an injunction in support of such declaration, and where the entire matter has been vigorously litigated on both sides and none of the litigants has even suggested that the plaintiffs be remitted to their remedy in the State courts, and where the highest State court had decided one of the main questions involved prior to the time when the contract rights of the litigants arose and had also adopted the "principle of reliance" announced in the case of **Gelpcke v. Dubuque**, 1 Wall. 175, should the Federal Court refuse to decide the case and remit the plaintiffs to their remedy in the State courts, on the ground that the highest State Court, after the making of the contract, had decided the question in a way contrary to the original decision of the highest State Court, such later State Court decision having been rendered in a case in which neither the earlier State Court decision on the particular point nor its prior decision adopting the principle announced in the **Gelpcke** case was called to the attention of the State Court, it being a fact that the case presented to the Federal Court involves no invasion of high State functions or policies, but only a question of how much the defendant city owes the plaintiffs on calling their bonds for payment before their maturity?

2. Where plaintiffs show by their complaint filed in a Federal Court that they are citizens of the State of Kansas, that defendants are citizens of the State of Florida, that the jurisdictional amount is involved, that there is an actual controversy presenting justiciable issues requiring determination and entitling plaintiffs to a declaratory judgment and an injunction in support of such declaration, and where the entire matter has been vigorously litigated on both sides and none of the litigants has even suggested that the plaintiffs be remitted to their remedy in the State courts, and where there are no State

court decisions on one of the main points involved that are contrary to the plaintiff's contentions, should the Federal courts refuse to decide the case and remit the plaintiffs to their remedy in the State courts, it being a fact that the case presented to the Federal courts involves no invasion of high State functions or policies, but only a question of how much the defendant city owes the plaintiffs on calling their bonds for payment before their maturity?

3. Where plaintiffs show by their complaint filed in a Federal Court that they are citizens of the State of Kansas, that defendants are citizens of the State of Florida, that the jurisdictional amount is involved, that there is an actual controversy presenting justiciable issues requiring determination and entitling plaintiffs to a declaratory judgment and an injunction in support of such declaration, and where the entire matter has been vigorously litigated on both sides and none of the litigants has even suggested that the plaintiffs be remitted to their remedy in the State courts, and where the highest State Court had decided one of the main questions involved prior to the time when the contract rights of the litigants arose and had also adopted the "principle of relance" announced in the case of **Gelpcke v. Dubuque**, 1 Wall 175, and where the highest State Court, after the making of the contract has decided the question in a way contrary to the original decision of the highest State Court, such later State Court decision having been rendered in a case in which neither the earlier State Court decision on the particular point nor its prior decision adopting the principle announced in the **Gelpcke case** was called to the attention of the State Court, it being a fact that the case presented to the Federal Court involves no invasion of high State functions or policies, but only a question of how much the defendant city owes the plaintiffs on calling their bonds for payment before their maturity, have not the plaintiffs presented a Federal question, and should not the Federal Court construe and apply **Section 34** of the

Federal Judiciary Act of September 24, 1789, C. 20., 28 U. S. C., Section 725, 28 U. S. C. A., Section 725, and decide whether the "principle of reliance" or "contract exception," laid down in the **Gelpcke case**,⁴ and adopted by the highest State Court before the contract rights of the plaintiffs arose, applies to the contract in question, rather than to require the parties to relitigate the entire controversy in the State courts, it appearing that the State Supreme Court not only has not decided that retrospective operation shall be given to its overruling decisions, but has decided that retrospective application shall not be given to its overruling decisions?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT OF CERTIORARI

There are special and important reasons why the writ of certiorari should be issued:

1. The doctrine of the **Erie Railroad** case and the other decisions of this Court that have followed it do not require the Federal courts to follow the "latest" State Court decisions, in cases where the highest State Court has decided an important question of State law prior to the making of a contract, and has decided the same question differently after the contract was made, especially where the State Court has adopted the "principle of reliance" or "contract exception," announced in the case of **Gelpcke v. Dubuque**, 1 Wall. 175, and has never receded from it. Yet, in a case where the Federal jurisdiction has been invoked by citizens of another State, who have shown that the jurisdictional amount is involved, and that there is an actual controversy presenting justiciable issues requiring determination and entitling plaintiffs to a declaratory judgment and an injunction in support of such declaration, and where the parties to the controversy have litigated the question in both the District Court and in the Circuit Court of Appeals, without objection or protest, the Circuit Court of Appeals has refused to decide the controversy as to which of the State Court decisions is applicable to the contract rights of the litigants, but

has remitted the plaintiffs (petitioners) to their remedy in the State courts. Since the State Court has never receded from the doctrine of the **Gelpcke case**, and since the case now presented involves no invasion of high State functions or policies, but only a question of how much a public corporation debtor owes the plaintiffs (petitioners) under its contract with them, it is important that this Court decide (a) whether the Federal Courts should not adjudicate the controversy and (b) what effect the overruling State Court decision has upon contract rights acquired prior to the rendering of the overruling decision.

2. This case presents the Federal question as to whether the Federal courts shall themselves construe and apply **Section 34** of the **Judiciary Act** of September 24, 1789, **C. 20, 28 U. S. C., Section 725, 28 U. S. C. A., Section 725**, in a controversy involving contract rights of the litigants, and decide whether the "principle of reliance" or "contract exception," laid down in the **Gelpcke case**, and adopted by the highest State Court before the contract rights of the litigants arose, applies to the contract in question, or whether, even though the plaintiffs (petitioners), who are citizens of another state, and who have invoked the jurisdiction which the Federal courts undoubtedly possess, are to be remitted to their remedy in the State courts, it appearing that there is a conflict between the State Court decisions announced before the contract was made and those announced afterwards, but that the State Court has never receded from the principle announced in the **Gelpcke case**. The parties litigant having submitted the controversy between them to the Federal courts and having fully litigated the matter there, it is important that this Court decide whether the earlier or later State Court decisions apply to and determine the contract rights brought in question.

3. Since the Federal Constitution extends the judicial power of the Federal courts to controversies between citizens of different states, even where no Federal question is involved, and since the Federal jurisdiction has been invoked by citizens of another state, in a presently

acute justiciable controversy, and since the case involves no invasion of high State functions, but only a question of how much money a public corporation debtor owes its creditors on refunding bonds called before their maturity, and since the refunding bond contract provides that "if any of the bonds hereby authorized be adjudged illegal or unenforceable, in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment," it is important that the Federal courts decide (a) whether the contract is or is not "illegal or unenforceable" and (b), if it is adjudged "illegal or unenforceable," whether and to what extent the creditors so invoking the Federal jurisdiction are entitled to be remitted to their interest rights under the old bonds, that question not having been foreclosed against such creditors by any decision of the State Court.

PRAYER FOR WRIT OF CERTIORARI

WHEREFORE, your petitioners pray that a writ of certiorari be issued, under the seal of this Court, directed to the United States Circuit Court of Appeals, commanding the said Circuit Court of Appeals, to send to this Court in due course all matters essential to a consideration of the questions presented by this petition, had in the case entitled on its docket W. J. Meredith, James G. Martin and A. R. Ohmart, appellants, versus The City of Winter Haven, a municipal corporation, et al., appellees, No. 10,402, to the end that said cause may be reviewed and determined by this Court, as provided by the statutes of the United States, and that the judgment of the said Circuit Court of Appeals in said cause be reversed, and for such further relief as to this Court may seem proper.

Respectfully submitted,

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

OPINIONS BELOW

No opinions were filed in the District Court. The opinions filed in the Circuit Court of Appeals appear in the record (R. 189, 198).

II.

STATEMENT OF THE GROUNDS ON WHICH JURISDICTION IS INVOKED

Petitioners seek a writ of certiorari, under **Section 240 (a)** of the **Judicial Code**, as amended, **Title 28 U.S.C.A., Section 347 (a)**, to review a final judgment of the Circuit Court of Appeals for the Fifth Circuit. The grounds or reasons which petitioners conceive should impel this Court to review the judgment are set out in the petition (pages 16 to 18). To be concise, we refrain from repeating them.

III.

STATEMENT OF THE CASE, QUESTIONS, AND SPECIFICATIONS OF ERRORS

The essential facts of the case, material to the consideration of the questions presented, with appropriate page references to the printed record, have been stated in the petition (pages 1 to 13). The questions presented and the errors specified are also stated in the petition (pages 13 to 16). In the interest of brevity they will not be repeated here.

IV.

ARGUMENT

The Florida Constitution of 1885 is still in force, although some of its provisions have been amended or supplemented from time to time.

Section 6 of Article IX, as originally adopted, provides that:

"The Legislature shall have power to provide for issuing **State bonds** only for the purpose of repelling invasion or suppressing insurrection, or for the purpose of redeeming or refunding bonds already issued, **at a lower rate of interest.**" *

It will be noted that **no limitation** was placed upon the power of the Legislature to authorize the issuance of **municipal bonds**.

On November 4, 1930, **Section 6 of Article IX**, was amended so as to read as follows:

"The Legislature shall have power to provide for issuing **State bonds** only for the purpose of repelling invasion or suppressing insurrection, and the counties, districts or **municipalities** of the State of Florida shall have power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such counties, districts, or municipalities shall participate, to be held in the manner to be prescribed by law; **but the provisions of this law shall not apply to the refunding of bonds issued exclusively for the purpose of refunding of the bonds or the interest thereon of such counties, districts, or municipalities.**" *

It will be noted that, in the amendment, the provision for a "lower rate of interest" in relation to refunding bonds has been **dropped**, and that it **never did** apply to refunding bonds issued by **municipalities**.

* Note: Emphasis has been supplied in some of the quotations in this brief.

* Note: The latter part of the amendment is not confined to bonds issued to refund bonds that have already been refunded, but excepts from the operation of the prior part of the section the issuance of bonds to refund any municipal bonds or the interest thereon when the refunding bonds to be issued are designed merely to extend the time for the payment of the indebtedness. (See: **State v. City of Miami**, 100 Fla. 1388, 131 So. 143, decided December 5, 1930.)

In February, 1931, the City of Tampa authorized the issuance of \$200,000.00 of refunding bonds, bearing interest at the rate of $5\frac{1}{2}$ per cent, to refund \$200,000.00 of outstanding bonds, issued prior to 1930, bearing interest at the rate of 5 per cent. The bonds were validated in statutory bond validation proceedings, in March, 1931, and the validation decree was affirmed by the Supreme Court of Florida on April 23, 1931. The case is reported as **Sullivan v. City of Tampa, 101 Fla. 298, 134 So. 211.**

Mr. Justice Brown, speaking for the Court, in an opinion unanimously concurred in, discussed at great length the contention raised by the intervening appellant taxpayer that the City of Tampa could no longer issue refunding bonds bearing a higher rate of interest than the obligations to be refunded, without the issuance of such refunding bonds having been first approved by a majority vote of the freeholder electors of the municipality, because of the provisions contained in amended **Section 6, of Article IX, of the Constitution**, adopted November 4, 1930.

The Court held that the constitutional amendment did not deprive a municipality of the power to issue refunding bonds at a rate of interest greater than the rate borne by the obligations to be refunded, without a freeholder vote.

The bonds then under consideration were being issued under the authority of the **General Refunding Act of 1927, Chapter 11855, Acts of 1927.**

Subsequent to the decision in the case of **Sullivan v. City of Tampa**, the Legislature enacted the **General Refunding Act of 1931, Chapter 15772, Acts of 1931**, with provisions similar to those of the **General Refunding Act of 1927**, including the provisions that interest on refunding bonds should not exceed 6 per cent, and that the refunding bonds should not be sold for less than 95 per cent of their par value, which provisions had been construed, upheld and applied in the **Sullivan case.**

Thereafter, the City of Winter Haven General Refunding Bonds, Issue of 1933, were issued in exchange for bonds previously issued by the municipality.

After the 1933 Winter Haven General Refunding Bonds were issued, the Florida Supreme Court decided the case of **Outman v. Cone**, 141 Fla. 196, 192 So. 611.

In that case, the Court did what it held in the **Sullivan case** it could not do, namely, it read into the constitutional amendment, by implication, a provision to the effect that a refunding bond not authorized at a freeholder election must bear a lower rate of interest than the bond refunded; otherwise, the necessary expense of refunding, added to the existing interest rate, would increase the obligation of the bond and prevent the bond from being such a refunding bond as is contemplated by the provision of the amendment permitting only refunding bonds to be issued without an approving freeholder election.

The Court therefore held that a provision for the payment of deferred interest at the original rate, less previous payments, where the refunding bonds had not been authorized by the freeholders, was illegal and void.

While this present case was pending in the District Court, the Florida Supreme Court decided the case of **Andrews v. City of Winter Haven**, 148 Fla. 144, 3 So. (2nd) 805, holding the deferred interest provisions of the 1933 Winter Haven General Refunding Bonds to be invalid and unenforceable.

However, the provision of the authorizing resolution to the effect that a bondholder should be remitted to the position of a holder of the original bonds, in the event the new contract should be declared invalid or unenforceable, in whole or in part, was not called to the attention of the Florida Court in the **Andrews case**. In fact, the resolution was not called to the attention of the Court at all. Hence, the Court had only a part of the contract before it.

The briefs filed in the case by Mr. Andrews made no reference to the **Sullivan case**, or to the fact that the

Florida Court had announced and declared a contrary principle of law prior to the issuance of the Winter Haven bonds. The briefs made no effort to invoke the doctrine of both the State and Federal Courts that the law to be applied in considering a contract is the law which existed or had been judicially declared at the time when the contract was made.

Gelpcke v. City of Dubuque,
1 Wallace (U. S.) 175.

Columbia County Commissioners v. King,
13 Fla. 451, (decided over 70 years ago)

State ex rel Nuveen v. Greer,
88 Fla. 249, 102 So. 739 (decided in 1924)

Humphreys v. State ex rel. Palm Beach Co.,
108 Fla. 92, 145 So. 858 (decided January, 1933)

Alta Cliff Co. v. Spurway,
113 Fla. 633, 152 So. 731 (decided in November, 1933)

Lee v. Bond-Howell Lumber Co.,
123 Fla. 202, 166 So. 733 (decided March, 1936)

In **State ex rel. Nuveen v. Greer**, it was declared that the principle of **Gelpcke v. Dubuque** and **Columbia County v. King** is a matter of constitutional right, recognized and protected by the Florida Constitution.

The doctrine of the **Gelpcke case** has never been overruled. It is not affected by the decision in **Erie Railroad Co. v. Tompkins**, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188.

It is true that several of the cases following the **Erie Railroad case** hold that, as a general proposition, the Federal courts must follow the "latest" decision of the State courts, and that the Federal courts are not at liberty to follow earlier State Court decisions merely because the Federal Court considers the earlier State Court decisions to be better reasoned, or to reach a more desirable result, than the later decisions overruling them. Never-

theless, it is submitted that it has never been held that a State Court decision construing a provision of the Constitution of the State, and upon the strength of which contract rights have been entered into, is to be disregarded in favor of a later decision overruling the former holding, thereby invalidating the contract.

There is an illuminating discussion of this question in an article by Professor Orvill C. Snyder, of the Brooklyn Law School, St. Lawrence University, published in the summer of 1940, in the **Illinois Law Review**, Volume 35, page 121, entitled: "**Retrospective Operation of Overruling Decisions.**"

Professor Snyder states, at Page 130 of his article, that:

"In the cases, retrospective operation of overruling decisions is stated as the general rule but consistently with exceptions. The most discussed exception is the one, taking its rise from certain language in the case of **Ohio Life Insurance & Trust Co. v. Debolt**, which may be called the contract exception. It may briefly be stated to the effect that an overruling decision will not be given retrospective operation to affect contracts made or property rights acquired in reliance upon the decision overruled."

Although, at page 133, he states that the "contract exception" to the retrospective operation of overruling decisions was formerly thought to be based upon constitutional grounds, nevertheless, he demonstrates, at page 139, that the "contract exception" has survived the decisions holding that a change of decision is not the making of a law, in violation of the impairment guaranty of the Federal Constitution.

Professor Snyder discusses at some length the case of **Gelpcke v. Dubuque**, 1 Wall. 175, and the subsequent decisions of the State and Federal Courts following the **Gelpcke** case. He shows that the rule of the **Gelpcke**

case, as stated in the opinion, "rests upon the plainest principles of justice." The particular principle referred to he designates as the "principle of reliance."

The "principle of reliance" is a principle of the common law, which is shown by Professor Snyder to ante-date the Federal Constitution. This is demonstrated, at page 146 of the article, by quotations and citations from **Blackstone's Commentaries**, **Kent's Commentaries**, the **Federalist Papers**, **Bracton**, and **Coke upon Littleton**.

The principle is that the law is a rule of conduct, that is, a rule relating to the conduct of a person who is to obey the rule or suffer the sanctions of the law if he does not, and since the only rule anyone can obey is the rule which exists and which he can discover at the time he acts, ignorance of which he will not be allowed to plead as an excuse, therefore, a person has the right to be judged by the rule which, at the time he acts, he can discover and then obey if he will.

This "principle of reliance" forms the basis of the doctrine of **stare decisis**.

It is the same principle that is involved in the constitutional prohibition against ex post facto legislation and against legislation impairing the obligation of contracts. The "principle of reliance" is not the constitutional guaranties themselves, but it is the principle underlying both of these guaranties.

It is a principle of the common law, which existed before the time of written constitutions.

In this connection, it should be noted that **Section 71, Revised General Statutes of Florida, 1920 (Section 87, Compiled General Laws of Florida, 1927)**, which has been in force since November 6, 1829, provides that:

"The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the fourth day of July, 1776, are hereby declared to be of force in this State: Provided, the said statutes

and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this State."

It is, of course, not our purpose to urge the complete adoption of the thesis of Professor Snyder's article. All that we ask this Court to do is to recognize and apply the "principle of reliance" or "contract exception" laid down in the **Geipcke case** and adopted by the Supreme Court of Florida as a principle of substantive law.

Professor Snyder's article states, in footnote 217, on page 144, of **Volume 35, Illinois Law Review**, that the case of **Erie Railroad Company v. Tompkins**, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188, "probably requires the federal courts to follow the state rule on retrospection in all issues of state law where the state courts have held expressly either that an overruling decision relates backward or that it relates forward: * * *

"Although the federal contract exception has always been curiously involved with the general law doctrine of **Swift v. Tyson**, * * * the overruling of **Swift v. Tyson** does not prevent the federal courts from following the exception where the state courts have not decided that retrospective operation shall be given to its overruling decision."

The article also points out that on December 4, 1939, Chief Justice Hughes, in a concurring opinion, with Justices McReynolds and Roberts, with relation to the retrospective effect of an overruling decision of the Supreme Court of Oklahoma, said:

"I think that we are not at liberty to assume that the Oklahoma court would so far depart from the plain requirements of justice. * * * The state court has not spoken to that effect."

Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 309 U. S. 4, 60 Sup. Ct. 215. (Text 219), decided in 1939.

Pertinent portions of Professor Snyder's article are printed in the Appendix to this brief.

Since the Supreme Court of Florida has expressly declared the "contract exception" or "principle of reliance" to be the law of Florida (see **Columbia County v. King**, supra, **State ex rel. Nuveen v. Greer**, supra, **Humphreys v. State ex rel. Palm Beach Co.**, supra, **Alta Cliff Co. v. Spurway**, supra, and **Lee v. Bond-Howell Lumber Co.**, supra), it is insisted that the Federal Courts are bound by the rule of the **Erie case** to apply the "contract exception" or "principle of reliance" and to follow the rule of **Sullivan v. City of Tampa** in determining the petitioners' rights under their refunding bond contract.

But the District Court felt impelled to follow the "latest" decision of the Florida Court, and held the deferred interest provisions of the bond contract illegal and unenforceable, although holding that the city had the right to call the bonds without paying any part of the deferred interest that was specifically provided to be paid in the event the bonds were called, or in other words, that the provision for payment of a stated portion of the deferred interest upon calling the bonds should be treated as eliminated and the City permitted to redeem the bonds on call without paying any part of the deferred interest.

However, the refunding bond contract protects the bondholders against this very contingency, for Section 20 of the resolution authorizing the 1933 bonds, provided that:

"If any of the bonds hereby authorized be adjudged illegal or unenforceable, in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment." (R. 83).

Thus, the takers of the 1933 refunding bonds foresaw the possibility of just such a situation as has now arisen, and the City and its bondholders expressly provided, in the contract, that in such event, the holders of the original

bonds, having exchanged their original holdings for the 1933 refunding bonds and cooperated with the City in adjusting its financial affairs, would not be penalized, in the event a portion of the new refunding bond contract should be held invalid, and be forced to accept a contract with one or more features eliminated therefrom, which might, very well, as in the instant case, result in a situation which the original bondholders would never have entered into willingly, but would have the option, in such a contingency, to revert to their rights under the original bond contract.

There was nothing unfair or illegal about this provision. On the contrary, it is extremely unfair to hold, as the District Court has held, that the bondholder, having been induced to surrender his original contract in exchange for a new contract, a vital portion of which has now been whittled away by court construction, must be bound by that portion of the new contract which survives the decision of the Court, and which wholly favors the City, and thus be placed in the position of having accepted a contract which he did not make, and could not have been forced to accept, although at the time of surrendering his original bond, it was expressly stipulated between the bondholder and the City that, unless he chose to do so, the bondholder could not be forced to accept less than the entire new contract, in the event any portion of it proved illegal or unenforceable.

The defendants in the District Court relied upon the ruling of the Florida Supreme Court in the **Andrews case** that the call provision of the 1933 refunding bonds could be separated from the deferred interest provision, which forms an integral portion of the call feature, from which the State Court concluded that the City was entitled to call and redeem the bonds, but did not have to pay any portion of the deferred interest in order to redeem or pay the bonds on call.

The amendment to the complaint, however, shows that in the **Andrews case**, the State Court did not have before it that provision of Section 20 of the authorizing reso-

lution which allows the refunding bond takers to assume the position of holders of a like amount of the original bonds in the event any portion of the refunding bond contract should be held illegal or unenforceable (R. 107).

In fact, the amendment shows that no part of the resolution authorizing the 1933 refunding bonds was brought to the attention of the Court in the **Andrews case**, either by the pleadings or by the briefs, and that the bond contract was not fully submitted to the Circuit Court of Polk County or to the Supreme Court of Florida (R. 102).

The only portion of the refunding bond contract pleaded in the **Andrews case** was a copy of one of the bonds (R. 142) and a copy of one of the deferred interest coupons (R. 111).

Instead of submitting a copy of the resolution authorizing the 1933 refunding bonds, the plaintiff in the **Andrews case** submitted a copy of a preliminary agreement between the City of Winter Haven and certain creditors who agreed to set up a refunding agency, which agreement formed no part of the City's contract with its bondholders (R. 119).

There was, therefore, no ruling whatever by the State Court on the right of the plaintiffs (petitioners) to assume the position of holders of the original bonds.

In **Jefferson County v. Hawkins, Trustee, 23 Fla. 223, 2 So. 362**, the Supreme Court of Florida considered a case where the County had issued certain bonds, referred to for convenience as "blue bonds." Later, the County, without legislative authorization, issued refunding bonds in lieu of the "blue bonds," for the principal of the bonds and for the matured interest. The new or refunding bonds were referred to as "white bonds." The Court held that the "white bonds" were void, but that when the County took up the "blue bonds" with the "white bonds," that did not extinguish the debt, but the debt remained until paid. It was further held that the County was obligated to pay interest on the principal of the "blue bonds" at the contract rate, and to pay interest on the matured "blue bond" interest coupons, from their maturity, at the legal rate.

In the case of **State, ex rel. Gillespie v. Walthal**, 124 Fla. 866, 169 So. 552, decided July 21, 1936, the Florida Supreme Court, speaking of the identical issue of Winter Haven 1933 refunding bonds involved in the instant case emphasized the fact that, **on the strength of the validation decree, procured by the City**, the original bonds had been exchanged for the refunding bonds and surrendered to the City, and **held that the refunding bonds "therefore were, at least valid extensions pro tanto of the original obligations."**

Neither of these cases has ever been overruled.

Yet, in the present case the District Court, after holding the deferred interest portion of the call provisions of the refunding bond contract illegal and unenforceable, went further and held that the plaintiffs (petitioners) were not entitled to assume the position of holders of a like amount of the bonds refunded and as such enforce their claim for payment.

On appeal, the appellants (petitioners) assigned as error the holding of the District Court that the bond contract was in part illegal and unenforceable because of the Florida decisions announced after its making. They also assigned as error the holding of the District Court that the plaintiffs (petitioners) were not entitled to be remitted to the position of holders of a like amount of the bonds refunded.

It is insisted that appellants (petitioners), on the showing made, were entitled to have these questions determined by the Circuit Court of Appeals.

It is also insisted that the case presented a Federal question, that is, the construction and application of a Federal statute, **Section 34 of the Federal Judiciary Act of September 24, 1789, C. 20, 28 U.S.C.A., Section 725**, which provides that:

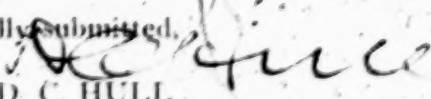
"The laws of the several States, except where the Constitution, treaties, or statutes of the United States otherwise require or provide, shall be re-

garded as rules of decision in trials at common law, in the courts of the United States, in cases where they apply."

and that the petitioners were entitled to have the Federal courts apply the principle announced by the Supreme Court of the United States in the case of **Gelpcke v. Dubuque**, 1 Wall. 175, and follow the law as judicially declared at the time of the making of the contract involved, that is, to recognize and apply the "principle of reliance" or "contract exception," laid down in the **Gelpcke case**, and adopted by the Supreme Court of Florida, as a principle of substantive law, before the contract in question was made."

However, it appears that the Circuit Court of Appeals has, sua sponte, decided to remit petitioners to their remedy in the State courts, even though their contract rights have been submitted to the Federal courts, by both parties to the contract, and the matters in controversy have been fully litigated in the Federal courts, without objection or protest from anyone, and notwithstanding the fact that, as pointed out in the dissenting opinion of Circuit Judge Sibley, the case "involves no invasion of high State functions or policies as to which caution is due, but only a question of how much this City owes these bondholders on calling their bonds for payment before due."

Respectfully submitted,


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APPENDIX

EXCERPTS FROM THE ARTICLE ENTITLED

"RETROSPECTIVE OPERATION OF OVERRULING DECISIONS"

35 Illinois Law Review 121

EXCEPTIONS TO RETROSPECTIVE OPERATION

In the cases, retrospective operation of overruling decisions is stated as the general rule but consistently with exceptions. The most discussed exception is the one, taking its rise from certain language in the case of **Ohio Life Insurance & Trust Co. v. Debolt**, which may be called the contract exception. It may briefly be stated to the effect that an overruling decision will not be given retrospective operation to affect contracts made or property rights acquired in reliance upon the decision overruled. Much ink has flowed in efforts to restrict the rule against retrospection to this exception, in attempts to narrow the exception itself, and in explanations of its basis.

It has been declared that the only exception pertains solely to contracts and property rights acquired by contract. However, a personal-rights exception has appeared in criminal prosecutions; and puzzling, perhaps peculiarly instructive, is the fact that when this happened the contract exception was introduced into the reasoning with the personal-rights exception later being cited to support the contract exception. It has been sought to narrow the contract exception to cases in which decisions construing statutes are overruled but the exception had been announced in the field of constitutional construction and has emerged in the field of pure case law. It has been essayed to confine the contract exception to cases of actual reliance on the overruled decision—with the result of raising a pre-

sumption of reliance.¹¹¹ It has been suggested that the contract exception is one of the federal courts not recognized by state courts; that it is followed by the federal courts only in cases originating in these courts but not by the Supreme Court in cases coming to it from state courts of last resort; and that when followed by the federal courts it is followed only in cases involving questions of state law. Yet the exception has spread widely among state courts and there with extended scope. Even in the federal courts the original dictum was uttered in a case in which the Supreme Court was reviewing the decision of a state supreme court,¹¹² and it cannot be overlooked that another case, often cited as an exception to the retrospective operation of overruling decisions although this seems clearly an erroneous view of the case, was decided by the Supreme Court in reversing the Court of Appeals of New York. Moreover, when considering the validity of a federal statute in an action originating in a federal court—a question of federal law in a federal court, the Supreme Court has said that “an all inclusive statement of a principle of absolute retroactive invalidity cannot be justified,”¹¹³ i.e., that relation backward of a decision holding

¹¹¹ (In footnote 111, the author demonstrates that “the prevailing rule is that this reliance need not be affirmatively shown, but will be implied from the attendant circumstances of the case,” and that “reliance will be presumed until it is affirmatively proved that there was no reliance.”)

¹¹² *Ohio Life Insurance Co. v. Debolt*, *supra* note 102.

¹¹³ *Chicot County Drainage District v. Baxter State Bank*, 60 S. Ct. 317, 319 (1940). In this case an action was brought on some bonds in a United States district court. The defendant set up an earlier decree of the same court cancelling the bonds and enjoining their enforcement. The decree was held invalid by the lower courts “because, subsequent to its entry, this Court in a proceeding relating to a municipal district in Texas had declared the statute under which the District Court had acted to be unconstitutional.” The Supreme Court said: “The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree.” Citing *Norton v. Shelby County*, 118 U. S. 425, 442 (1886) and *Chicago, Indianapolis & Louisville Ry. Co. v. Hackett*, 228 U. S. 559, 566 (1913). The Court continued: “It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual

a federal statute invalid may be limited. If so, why not the retrospective operation of a decision overruling a previous decision? All in all, trying to reduce the rule against retrospective operation to a little, narrow exception seems somewhat signally marked with insuccess. The rule is hard to confute.

BASIS OF THE CONTRACT EXCEPTION

In the beginning it was thought that the contract exception should be based upon constitutional grounds, as the following widely quoted passage from **Douglass v. Pike County** witnesses: "The true rule is to give the change in judicial construction in respect to a statute the same effect in its operation on contracts and existing contract rights that would be given to a legislative amendment; that is to say, make it prospective, but not retrospective. After a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text-itself, and a change of decision is to all intents and purposes the same in its effect on contracts as an amendment of the law by means of a legislative enactment. . . . We cannot give then a retroactive effect without impairing the obligation of contracts long before entered into." The import of this seems to be that the judicial act of construing a statute is **making** law as much as the enactment of a statute by a legislature and, hence, is **passing** a law within the meaning of the constitutional guaranty of the obligation of contracts.

If we are to judge by the citations in practically every case giving it, Mr. Chief Justice Taney originated this

existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects—with respect to particular relations, individual and corporate, and particular conduct, private and official." Can it not also be said that the actual existence of a decision is an operative fact which must be considered when the decision is declared to be invalid by overruling? The overruled decision cannot totally be erased by a new judicial declaration. While the overruled decision truly never was law, the unconstitutional statute also truly never was law.

theory in 1853 in the case of **Ohio Life Insurance Co. v. Debolt**, which, as was asserted, involved a change of construction of the constitution of Ohio. A charter containing tax exemptions had been granted in 1845. For half a century it had been considered that the constitution of the state did not prohibit tax exemptions in charters and it was contended that the Ohio court upheld legislation of 1851 by changing its construction of the constitution thereby impairing the charter contract. The Chief Justice indicated that such a change could constitute an impairment of a contract. In so saying, he relied upon **Rowan v. Runnels**, decided in 1847. In this case, originating in the federal courts upon notes given for the sale of slaves, the Supreme Court followed a construction of the constitution of Mississippi made by it before the notes were given rather than a construction made by the courts of Mississippi after the notes were given. The **Debolt** idea was referred to in 1863 in **Gelpcke v. Dubuque** and in 1879 in **Douglass v. Pike County**, both of which presented a change of decision by the supreme court of a state on the constitutional validity, under the state constitution, of state legislation. These are the sources of the contract exception. Since each case involved the meaning of a constitution, the theory announced in them considered as a theory of making law, is a theory of making constitutional law. Hence, the theory originated as one of constitutional construction rather than of statutory construction. However, many state courts extended the theory to the field of statutory construction.

COLLAPSE OF A CONSTITUTIONAL BASIS

But the theory has not provided a constitutional basis for the contract exception. In the field of statutory construction, the Supreme Court has repeatedly held that a change of decision by a state court as to the "meaning and scope" of a state statute is not making a law in violation of the impairment guaranty. In the field of constitutional construction, the Supreme Court had deserted the theory even before **Douglass v. Pike County** was decided; for in

Railroad Co. v. McClure, the court had held that, although a state constitution is a law within the meaning of the impairment guaranty, a change in judicial construction of a constitution does not violate that guaranty—a view frequently reiterated. While several state courts adopted the making-law-impairing-contracts view in the field of statutory construction and some in the field of constitutional construction; others rejected it outright; and those accepting the theory did so after **Railroad Co. v. McClure** so that their views constituted a misapprehension even at the time of announcement.

* * *

But there is no reason to believe the contract exception disappears with constitutional theories about it. The first definitive announcement of the exception was in 1863 in **Gelcpke v. Dubuque**; for **Ohio Life Insurance & Trust Co. v. Debolt**, decided in 1852, and **Rowan v. Runnels**, decided in 1847, were but dicta. The **Dubuque case** did suggest the impairment guaranty as the basis of the exception to retrospective operation of the overruling decision. However, in 1870, in **Railroad Co. v. McClure**, the Court expressly held, in a case coming up from a state court, that such a change of decision does not violate the impairment guaranty, taking a position since maintained. The rule of the **Dubuque case** survived the rejection of the impairment guaranty; for it was followed after 1870. Even after the impairment guaranty had again been squarely rejected, in 1895, the Court, in 1900, announced that it would follow the **Dubuque case** in cases coming up from the lower federal courts, although in 1899, the Court had held that it would follow the **McClure case** in cases coming up from the state courts. The other of the four sources of the contract exception, **Douglass v. Pike County**, decided in 1879 and containing the widely quoted passage stating the making-law-impairing-contracts theory, followed the same rule as the **Dubuque case**, although it did not overrule the **McClure case** which was followed after 1879. Moreover, after the Court had in 1895 rejected the argument for the guaranty of due process of law as a basis of

the contract exception, it re-affirmed the positions taken in both the **Dubuque case** and the **McClure case**; and, after having the due-process contention again urged upon it in 1905, the Court, in 1924, again expressed an approving view of the rule of the **Dubuque case** but said that case, if it had come up from a state court would have involved "no federal question." Consequently, while the Supreme Court has never followed the contract exception on any ground in cases coming up from state courts, the exception¹⁷⁹ in the "independent jurisdiction" exercised in cases coming up from the lower federal courts still survives notwithstanding that any imagined constitutional basis for it has totally disappeared or has not been discovered.

REAL BASIS OF THE EXCEPTIONS

In **Gelpcke v. Dubuque**, the positive statement is made that the exception "rests upon the plainest principles of justice." Nine years later in **Olcott v. Supervisors**, the Court repeated that "such a rule is based upon the highest principles of justice." Sixty-one years later, the Court said that the exception had been adhered to in cases coming up from the lower federal courts "where gross injustice would otherwise be done." In commenting on the federal rule, five years after its announcement, the Supreme Court of Iowa said that "the opinion professes to be planted, in its own language, upon 'truth, justice, and law.'" In 1906, the same court denominated the exception as "a sort of equitable doctrine." The Supreme Court of Kansas has called it "only a rule of policy." The Supreme Court of North Carolina has referred to it as a rule "based upon the highest principles of justice"; and the Supreme Court of Appeals of West Virginia has declared that "it is

¹⁷⁹ The cases seem to deal only with changes of decision as to the constitutional validity of statutes. However, since the Supreme Court has always treated cases of constitutional construction and statutory construction coming up from state courts exactly the same (**Railroad Co. v. McClure**, supra note 166, and **Central Land Co. v. Laidley**, supra note 169), there is no reason to believe that it would not treat them the same in cases coming up from the lower federal courts.

difficult to sustain this exception on principle. It is plainly an exception made by the courts at the call of justice." This view—that the "principles of justice" constitute the basis of the federal contract exception—conforms to the fact that the Supreme Court has developed the exception only in its "independent jurisdiction" and has never announced any constitutional basis for it which it has not expressly repudiated.

The contract exception in the state courts has been, it is true, frequently planted on the making-law-impairing-contracts passage from **Douglass v. Pike County**. However, in statutory construction cases, other grounds have been announced. The Supreme Court of Alabama, along with the making-law-impairing-contracts reason, declared, in **Farrior v. New England Mortgages Security Co.**, that retrospection of overruling decisions "must be radically wrong. Such principle or rule of law would clog business transactions, unsettle titles, and destroy all confidence in the decisions of the supreme court of the state." The Supreme Court of Montana, without assignment of other grounds, said: "It would be manifestly unjust and improper to deprive the shipper of its legal right . . . simply because of the later opinion expressed by this court repudiating its former decision." The Supreme Court of North Carolina in **Hill v. Atlantic & North Carolina Railroad Co.**, set alongside the impairment guaranty another reason in the following words: "This court in **State v. Bell**, gave practical effect to the rule that the reversal of a precedent should not be allowed to work an injustice . . . Was that not the only fair and proper course to pursue, and would other have commended itself to our sense of right? The opposite rule would have met strong condemnation, as being contrary to the plainest principles of justice." And that court did more. It linked the contract exception with the personal-rights exception of the criminal case of **State v. Bell**, in which, the court had reasoned: "While it is true no man has a vested right in a decision of the court, it is equally well settled that where, in the construction of a contract or in declaring the law, respect-

ing its validity, the court thereafter reverses its decision, contractual rights as acquired by virtue of the law as declared in the first opinion will not be disturbed. We have diligently searched for authority by which courts have been governed in cases such as the one before us. We find nothing very satisfactory. . . . We have deemed it but just to the defendants and not at variance with any authority in this court, to order a new trial. . . . If the defendants shall be able to establish their defense in accordance with the ruling in **Neal's** case, they are entitled to do so; but the construction now put upon the statute will be applied to all future cases." If the contract exception and the personal-rights exception applied in criminal prosecutions are related, that relation, since no constitutional ground is given in the criminal case, must be that the two exceptions rest upon the common ground of the "plainest principles of justice." While both **Hill v. Atlantic & North Carolina Railroad Co.** and **State v. Bell** are cases involving changed constructions of statutes, the North Carolina court has, relying upon them, extended the contract exception to cases overruling common law precedents. In **Hill v. Brown**, that court, in addition to the impairment guaranty, gave the following reason:

"We deduce the well-settled principle from a number of authorities that the law of contract enters into the contract itself and, in the construction, forms a part of it. It is practically a dormant stipulation in the contract, and it must be enforced as a part of it, and as it is construed at the time the contract is made." But the court did not stop there; it went on to say that the principle it was applying had been fully recognized in **Hill v. Atlantic & North Carolina Railroad Co.**, quoting therefrom what was quoted in that case from **State v. Bell**. By this line of reasoning the court unshackled the contract exception and grounded it, both in cases overruling statutory constructions and in cases overruling common law precedents, on the same "principles of justice" which are to be observed also in criminal cases. In denying retrospection of a decision overruling an equity precedent, the Supreme Court of

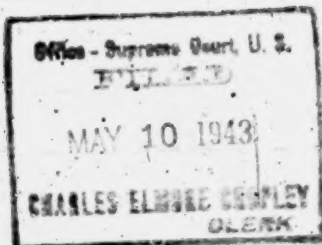
Alabama stated that it did so "that no injustice may be done." Consequently, the contract exception in some state courts too has been rested on "principles of justice" as a sole ground or as a ground in addition to the impairment guaranty.

This view is confirmed by the personal-rights exception in the criminal cases. We have already seen how **State v. Bell** and the contract exception have been linked together. In **State v. Longino**, the Supreme Court of Mississippi mentioned the contract exception as if to indicate that its reason is fully in accord with the following: "We think that a change of decisions involving the interpretation of criminal statutes should have a prospective effect. This rule seems to be just and the most reasonable rule. This rule applies the same principle as the constitutional prohibition of ex post facto legislation. It will prevent injustice and also prevent cruel and unusual punishment." The court also cited **Ingersoll v. State**, which was a prosecution under a liquor law of 1853. The statute had been upheld by the courts but was repealed by an act of 1855. The repealing act had been held invalid in 1858. The Supreme Court of Indiana then stated: "Under such circumstances, it would be unjust—would be a violation of all principles of right—to hold that the act of 1853 was all this time in force, and the people incurring its penalties. It would make the law a concealed trap to catch victims." In **State v. O'Neil**, a case involving a change of decision on the constitutional validity of a penal statute, the Supreme Court of Iowa, after discussing the contract exception, stated: "These cases are cited, not as indicating any constitutional duty on the part of the courts of a state to protect a litigant in rights which he in good faith supposed he had already acquired by reason of previous decisions of the same court in other cases, but for the purpose of illustrating the extent to which a court may properly go in administering the law for the purpose of effectuating justice; that is, for the purpose of rendering such decision as shall appeal to intelligent and fair-minded people as right and proper. The assumption is that the

statutory criminal law is to be administered in accordance with the general principles of right and justice recognized in the common-law system. . . . Respect for the law . . . is weakened, if men are punished for acts which according to the general consensus of opinion they were justified in believing to be morally right and in accordance with law. . . . We do not believe such exception to be against public interest but rather in furtherance of justice. Since the Supreme Court of the United States has held that a change of decision in the construction of a substantive criminal statute or in a rule of criminal procedure does not violate the ex post facto prohibition and has rejected the contention that the guaranty of due process of law is infringed by overruling "well-established precedents" in a case of criminal contempt, the personal-rights exception of the criminal cases also must rest on the "principles of justice" rather than on constitutional grounds. And the inter-linking of this exception and the contract exception in the reasoning supporting each reemphasizes that the "principles of justice" are the foundation of the latter too.

(For the sake of brevity, we have omitted various footnotes, giving citations, cross references and comments.)

FILE COPY



IN THE
**Supreme Court of the
United States**

No. 923

12

OCTOBER TERM, 1942

W. J. MEREDITH, JAMES G. MARTIN and A. R.
OHMART,

Petitioners.

versus

THE CITY OF WINTER HAVEN, a municipal corpo-
ration, et al.,

Respondents.

**REPLY BRIEF OF PETITIONERS IN
SUPPORT OF PETITION
FOR WRIT OF
CERTIORARI**

D. C. HULL
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SUBJECT INDEX

Topic	Page
In General	1
Respondents' Contentions Answered	3
Conclusion	11

TABLE OF AUTHORITIES CITED

Cases	Page
Andrews v. Winter Haven,	
148 Fla. 144, 3 So. 2nd 805	3, 9, 10
Columbia County Commissioners v. King,	
13 Fla. 451	5
Gelpcke v. Dubuque,	
1 Wall. (U.S.) 175	2, 5, 6, 7, 8
Jefferson County v. Hawkins, Trustee,	
23 Fla. 223, 2 So. 362	4, 6, 10
Miami v. State,	
139 Fla. 598, 190 So. 774	8
Outman v. Cone,	
141 Fla. 196, 192 So. 611	3, 5, 8
State v. New Smyrna Beach,	
148 Fla. 482, 4 So. 2nd 660	3
State v. Special Tax School District No. 3,	
143 Fla. 557, 197 So. 127	3
Sullivan v. Tampa,	
101 Fla. 298, 134 So. 211	3, 4, 6, 7, 8
Taylor v. Williams,	
142 Fla. 402, 195 So. 175,	
142 Fla. 562, 195 So. 184	3
Thompson v. Magnolia Petroleum Company,	
309 U.S. 478, 60 S. Ct. 628	6
Wichita Royalty Company v. City National Bank,	
306 U.S. 103, 59 S. Ct. 420	6

Statutes and Constitutional Provisions	Page
Amended Sec. 6, Art. IX, Florida Constitution	2, 7
Federal Judiciary Act, Sec. 34	2
Florida Constitution, Sec. 6, Art. IX, (amended)	2, 7
General Refunding Act of 1927	8
General Refunding Act of 1931	8
United States Code Annotated, Title 28, Sec. 725	2

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In General

Notwithstanding anything set forth in the Opposition Brief of the Respondents, it appears to be quite important that this Court decide (a) whether the Federal Courts should not adjudicate the controversy here presented rather than require the entire matter to be re-litigated in the State Courts and (b), what effect the overruling State Court decisions have on contract rights acquired prior to the rendering of the overruling decisions, it appearing that the highest State Court has adopted and never receded from the "principle of reliance" or "contract exception" laid down in

Gelpcke v. Dubuque, 1 Wall. (U.S.) 175, and that this Court decide (a) whether the petitioners' bond contract is or is not "illegal or unenforceable," in whole or in part, and (b) if it is adjudged "illegal or unenforceable," in whole or in part, whether and to what extent the petitioners, who have invoked the Federal jurisdiction, are entitled to be remitted to their interest rights under the bonds surrendered in exchange for the refunding bonds, that question not having been foreclosed against them by any decision in the State Courts, and such right of "subrogation" being in harmony with the opinions of the highest State Court on the subject.

Some of these questions, if not all of them, are of great public importance and interest.

The fact that the members of the Circuit Court of Appeals hold divergent views is indicative of the importance of these questions, just as much so as if two different Circuit Courts of Appeals had rendered conflicting decisions.

It appearing that the highest State Court had construed amended **Section 6**, of **Article IX**, of the **Florida Constitution**, before the petitioners' bond contract rights were acquired, and has construed it in an entirely different way after such rights were acquired, and it further appearing that the State Court has consistently adhered to the "principle of reliance" or "contract exception" announced in the **Gelpcke case**, it is important that this Court decide which of "the laws" of Florida, as defined by the highest Court of the State, "shall be regarded as rules of decision," as provided by **Section 34**, of the **Federal Judiciary Act**, 28 U.S.C.A. **Section 725**.

And since it is true that the questions at issue have been submitted to the Federal Courts by the parties in interest, without objection or protest, and have been fully litigated there, and since, as Judge Sibley has pointed out, the case "involves no invasion of high State functions or policies as to which caution is due," no good reason is seen as to why the parties litigant should be required to relitigate the matter in the State Courts; especially in view of the public importance of the questions involved.

Respondents' Contentions Answered

It is respectfully submitted that the first of the "seven conclusions" of the majority of the Circuit Court of Appeals, mentioned by respondents, that "every question presented for decision . . . is a question of state cognizance to be determined under controlling state law" is incorrect, and that this case presents the controlling question of which of "the laws" of the State of Florida, as announced by the highest State Court, "shall be regarded as rules of decision," in the Federal Courts. That is to say, is it "the law" as declared when the petitioners' contract rights were acquired that is to be applied in determining such rights, or is it "the law" as declared after such contract rights had been acquired?

It appears that the respondents are not in agreement with the second of the "seven conclusions" upon which they state the decision of the majority of the Circuit Court of Appeals rests.

The majority opinion holds that the state of the law in Florida "is not clear, settled and stable."

It appears that the respondents do not agree, but that they rather contend that there is no conflict at all between the earlier and the later decisions.

If, as respondents contend, the decision in the *Sullivan* case (101 Fla. 298; 134 So. 211) is not in conflict with the decisions of the Florida Court in *Outman v. Cone*, 141 Fla. 196, 192 So. 611, *Taylor v. Williams*, 142 Fla. 402, 195 So. 175, 142 Fla. 562, 195 So. 184, *State v. Special Tax School District No. 3*, 143 Fla. 557, 197 So. 127, *Andrews v. Winter Haven*, 148 Fla. 144, 3 So. 2nd 805, *State v. City of New Smyrna Beach*, 148 Fla. 482, 4 So. 2nd 660, then the majority of the Circuit Court of Appeals was incorrect in its holding that the law of Florida on the matters in issue "is not clear, settled and stable," and the Circuit Court of Appeals should have decided this case in accordance with the decision of the Supreme Court of Florida in the *Sullivan* case.

Even if it should be admitted that the laws of Florida in relation to what respondents term "the principal prayer of petitioners" is "not clear, settled and stable," it cannot

NOTE: Emphasis has been supplied in some of the quotations in this brief.

be asserted that the Florida law with reference to the right of the petitioners to be subrogated to the position of holders of original bonds, in the event the refunding bonds should be declared illegal or unenforceable, in whole or in part, is not in harmony with the decision of the Florida Supreme Court in **Jefferson County v. Hawkins**, 23 Fla. 223, 2 So. 362.

No contrary decision has been cited by the respondents.

For the Circuit Court of Appeals to rest its decision upon the conclusion that the case of **Sullivan v. City of Tampa**, 101 Fla. 298, 134 So. 211, did not deal with "deferred or accumulated interest coupons" and "the proportion of them which could be paid in the event of call and redemption of the bonds before maturity" is to make too narrow and technical an application of the **Sullivan** decision.

• What was actually determined there was:

"The constitutional amendment unquestionably authorizes the issuance of refunding bonds without a vote of the people, and this court would not be authorized to add to the language of the constitutional amendment a condition not therein expressed; that is, by addition of a provision that such refunding should not be permitted unless the refunding bonds should bear no higher rate of interest than the original obligation and should not be sold for less than their full par value. It is the function of this court to construe and interpret constitutional amendments and not to make them. The constitutional amendment plainly provides for the issuance of refunding bonds issued exclusively for the purpose of refunding the bonds or the interest thereon of such counties, districts, or municipalities. The dictionary meaning of the word 'refund' is 'to fund again or anew; to replace (a fund or loan) by a new fund.' It is also a matter of common knowledge that refunding obligations cannot always be accomplished without holding out to the creditor some inducement in the form of an increase in the rate of interest or otherwise.

which would cause him to be willing to surrender his existing bonds and take the refunding bonds instead.

"It will be noticed that the only limitation upon the power of counties, districts, and municipalities to issue refunding bonds which is contained in the constitutional amendment is that such bonds be issued exclusively for the purpose of refunding the bonds or the interest thereon of such counties, districts or municipalities. The constitutional provision contains no express language which purports to fix or limit the rate of interest which the refunding bonds shall bear, or to fix the price at which they may be sold. Being wholly silent as to such matters, and no limitations being clearly implied from the use of the terms in the amendment itself, none will be implied by the court. . . . It is quite probable that the difference between the amount which may be realized from the sale of the refunding bonds and the amount of the original obligations which are to be refunded must be paid out of the general funds of the city, but if this is done, it will not increase the bonded debt of the city."

Petitioners having acquired their contract rights after this pronouncement by the Florida Supreme Court, and after that court had adopted the principle announced in the case of Gelpcke v. Dubuque, 1 Wall. (U.S.) 175, (see Columbia County Commissioners v. King, 13 Fla. 451), and the Florida Court having adhered to that principle consistently ever since, petitioners' rights are not to be abrogated because of the holding of the Florida Supreme Court in the case of Outman v. Cone, 141 Fla. 196, 192 So. 611, and the other cases upon which respondents rely, simply because some of these later decisions did deal with deferred interest coupons and the proportion of them to be paid in the event of call and redemption of refunding bonds before their maturity.

It is respectfully submitted that the majority of the Circuit Court of Appeals is laboring under a misapprehension

in adopting the conclusion that for the Federal Courts to decide this case would be for them to undertake "to declare the public policy of the state in respect of obligations of its municipalities."

We are not asking the Federal Courts to declare what the policy of the state in any respect shall be, but only that the Federal Courts will declare the contract rights of petitioners, who have acquired such rights in reliance upon a decision of the highest Court of the State, and determine how much money the municipality must pay these petitioners upon calling their bonds in advance of their maturity.

Respondents state that the action of the Circuit Court of Appeals in remitting petitioners to the State Courts for a determination of their rights accords with the action of this Court in **Thompson v. Magnolia Petroleum Company**, 309 U. S. 478, 60 S. Ct. 628, and **Wichita Royalty Company v. City National Bank**, 306 U. S. 103, 59 S. Ct. 420.

In **Thompson v. Magnolia Petroleum Company**, the opinion states that "neither statutes nor decisions of Illinois have been pointed to which are clearly applicable."

Here, petitioners have been able to point to the case of **Sullivan v. City of Tampa**, 101 Fla. 298, 134 So. 211, as clearly settling the question presented by what respondents refer to as "the principal prayer of petitioners," especially when considered in the light of the adoption by the Florida Supreme Court of the principle announced in **Gelpcke v. Dubuque**, 1 Wall (U.S.) 175.

On the other question, petitioners have been able to cite as determinative the case of **Jefferson County v. Hawkins, Trustee**, 23 Fla. 223, 2 So. 362, and respondents have cited no contrary decisions.

In **Wichita Royalty Company v. City National Bank**, both the Circuit Court and this Court decided the questions presented, rather than remitting the parties to their remedy in the State Courts.

This Court did not, as stated by respondents, "reverse" the Fifth Circuit Court of Appeals, "because it did construe

a later Texas decision as a reversal of an earlier one," or for any other reason.

On the contrary, this Court affirmed the Circuit Court of Appeals, but held that the decision of the highest Texas court in the particular case, had declared "the law of the case," and that "the law of the case," so determined, was not to be departed from because of a later decision of the same court in another case.

The respondents attempt to distinguish this case from the case of **Gelpcke v. Dubuque, 1 Wall (U.S.) 175.**

They state that the Supreme Court of Iowa first held constitutional a statute of that state authorizing the City to issue bonds, and plaintiff purchased his bonds in reliance upon the statute and decision, after which the Supreme Court of Iowa expressly reversed its former decision and held the statute unconstitutional and the bonds void.

This case presents a similar situation.

In **Sullivan v. City of Tampa, 101 Fla. 298, 134 So. 211,** the Supreme Court of Florida held that the provisions contained in amended **Section 6, Article IX, of the Florida Constitution,** adopted at the general election held November 4, 1930, did not deprive a municipality of the power to issue refunding bonds bearing a rate of interest greater than that borne by the obligations refunded, without a freeholder vote.

In this state of the law, the City of Winter Haven issued the refunding bonds now held by the petitioners.

Subsequent to the issuance of the Winter Haven refunding bonds, the Supreme Court of Florida has done what it held in the **Sullivan case** it could not do, that is, it has read into the constitutional amendment, by implication, a proviso to the effect that a refunding bond, not authorized at a freeholder election, must bear a lower rate of interest than the bond refunded; otherwise, the necessary expense of refunding, added to the existing interest rate, would increase the obligation of the bond and prevent the bond from being such a refunding bond as is contemplated by the provision

of the constitutional amendment permitting only refunding bonds to be issued without an approving election. The Court therefore held that a provision in a refunding bond contract for the payment of deferred interest at the original rate, less previous payments, where the refunding bonds had not been authorized by the freeholders, was illegal and void.

It is thus seen that this situation is quite similar to that involved in the **Gelpcke case**.

The respondents further attempt to distinguish the **Gelpcke case** by pointing out that the contract before the Court in the **Sullivan case** did not deal with the specific subject of deferred interest coupons, with provisions for redemption similar to those contained in the Winter Haven bonds.

In doing so, however, they take a narrow and technical position, instead of conceding the broad general principle announced in the **Sullivan case**.

In the next place, respondents state that in **Miami v. State**, 139 Fla. 598, 190 So. 774, the Florida Supreme Court "implied" that there was no inconsistency in the decisions because of the differences in the factual situation involved.

Even if there is no inconsistency between **Sullivan v. Tampa**, and **Miami v. State**, the same cannot be said of the cases of **Sullivan v. Tampa**, on the one hand, and **Outman v. Cone**, and the subsequent cases, on the other hand.

Again, respondents take the position that, simply because the bonds involved in the **Sullivan case** were issued under the **General Refunding Act of 1927**, while those involved in this case were issued under the **General Refunding Act of 1931**, and the two refunding acts are not identical in all respects, there is no repugnancy between the **Sullivan case** and the later cases.

But this is a distinction without a difference, since the main features of the two refunding acts are the same.

The fact that the **General Refunding Act of 1931** does not expressly state that the municipality may pay a portion of the deferred interest on calling refunding bonds before

their maturity does not affect the constitutional question involved.

Finally, the respondents contend that the later cases are in harmony with a long line of Florida decisions holding that various plans, schemes, or provisions, that were intended to evade the prohibition against issuing bonds, other than refunding bonds, without an election, are void:

But this case does not involve a plan, scheme or provision to evade the constitutional prohibition against issuing bonds, other than refunding bonds, without an election.

What is involved is a plan whereby the refunding bond takers, who were induced by the City to surrender their noncallable bonds and accept callable bonds in their stead, were to be allowed to recover a portion of the deferred interest, in the event their new bonds should be called before their maturity.

The respondents take the position that the decision in the case of **Andrews v. Winter Haven**, 148 Fla. 144, 3 So. 2nd 805," denied to a Florida holder of bonds of the same issue, the principal prayer of petitioners."

The following facts must be borne in mind in connection with that decision.

1. The **Andrews case**, although purportedly brought by a bondholder, for the purpose of establishing the validity of the deferred interest provisions of the Winter Haven 1933 refunding bonds, was actually brought by a litigant who was a substantial property owner and taxpayer of the City of Winter Haven, whose property holdings were at least as extensive as his bond holdings, while petitioners own no property in the City.

2. No process was issued in the **Andrews suit**, but the pleadings of all the parties were filed, the argument held, and the decree signed and filed, all in the course of a single morning, and it is difficult to conceive how the **Andrews case** could have been an adversary proceeding.

3. The briefs filed on behalf of George Andrews, purporting to protect the interests of the bondholders, made

no reference to the case of **Sullivan v. City of Tampa**, or any other cases which had been decided by the Supreme Court of Florida, prior to the time of the issuance of the 1933 Winter Haven refunding bonds.

4. No effort whatever was made on behalf of George Andrews to direct the attention of the Florida Supreme Court to the fact that it had announced and declared a contrary principle of law, prior to the time when the Winter Haven, 1933 refunding bonds were issued, or to invoke the doctrine of both the State and Federal Courts that the law to be applied in considering a contract is the law which existed and had been judicially declared at the time when the contract was made.

5. The entire bond contract was not submitted to the Court in the **Andrews case**.

Respondents contend that the express agreement to pay a portion of the deferred interest, upon call of the bonds in advance of maturity, is void.

They then pose the question: "How can a court of equity in the exercise of its conscience compel the payment of more than would be due under the contract if it were valid?"

Judge Sibley has decided that justice can be done by holding that "so much interest promised in the old bond ought to be paid as would make good the loss caused by the partial unenforceability of the new bond."

Respondents state that Judge Sibley thought that the question of whether the plaintiffs should, by the resolution authorizing the issuance of the 1933 refunding bonds, be subrogated to their rights as holders of original bonds was not ruled upon by the Florida Court.

What Judge Sibley actually said was that this question had not been **foreclosed** by the decision in the **Andrews case**, because the refunding resolution was not in that record and not considered by the Court.

Since the position contended for by the petitioners is entirely consistent with the holding of the Supreme Court of Florida in **Jefferson County v. Hawkins**, it is respectfully

submitted that the Circuit Court of Appeals should have decided this case itself, instead of remitting the plaintiffs to their right to bring a new suit in the State Court.

CONCLUSION

It is submitted that there is no valid reason why this case should not have been decided by the Federal Courts, where the questions involved have been fully litigated by the parties at interest, without objection or protest, and that the case presents questions of grave public interest that need to be decided by our highest Court.

Respectfully submitted,

D. C. HULL

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Attorneys for Petitioners.

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IN THE
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United States

OCTOBER TERM, 1943

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SUBJECT INDEX

Topic	Page
Opinions Below	1
Statement of the Grounds on which Jurisdiction is Invoked	1
Statement of the Case	2
Specification of Errors Intended to be Argued	15
Argument	16
Summary	16
First Question—The Gelpcke Doctrine	18
The Duty of the Federal Courts to Follow State Decisions	19
The Law of Florida is that a Contract is Gov- erned by the Law as Declared at the Time when the Contract was Made	20
The Doctrine of Gelpcke v. Dubuque Has Not Been Overruled	23
The Early Cases Construing the Amendment to the Florida Constitution	26
The Case of Outman v. Cone	29
The Case of Andrews v. Winter Haven	33
The Effect upon Contracts of Overruling De- cisions	36
Second Question—the Right to Revert to the Original Contract	41
Third Question—The Declination of the Federal Court to Exercise Jurisdiction	50
Appendix A—General Refunding Act of 1927	i
Appendix B—General Refunding Act of 1931	iv
Appendix C—"Retrospective Operation of Overruling Decisions," 35 Illinois Law Review 121	ix

ALPHABETICAL LIST OF AUTHORITIES CITED

Cases	Page
Alta Cliff Co. v. Spurway, 113 Fla. 633, 152 So. 731	23, 41
Anderson v. Santa Anna Twp., 116 U. S. 356, 29 L. Ed. 633 6 S. Ct. 413	37
Andrews v. Winter Haven, City of, 148 Fla. 144, 3 So. (2nd) 805	11, 12, 14, 33, 34 35, 47
Bass v. Inhabitants of Wellesley, 192 Mass. 526, 78 N.E. 543	50
Bay County v. State, 116 Fla. 656, 157 So. 1	28, 33, 35
Boynton v. Moffat Tunnel Improvement District, 57 Fed. (2nd) 722	35
Cavanaugh v. Looney, Attorney General , et al., 248 U.S. 453, 39 S. Ct. 142	51
Columbia County Commissioners v. King, 13 Fla. 451	13, 20, 22, 23, 33, 35, 36, 41
Cotten v. County Commissioners of Leon County 6 Fla. 610	20
Deyo v. Otoe County, 37 Fed. 246	49
Di Giovanni v. Camden Insurance Ass'n., 296 U.S. 64, 56 S. Ct. 1	52
Douglass v. Pike County, 101 U.S. 677, 25 L. Ed. 968	37, 38
Erie Railroad Company v. Tompkins, 304 U.S. 64, 58 S. Ct. 817, 82 L. Ed. 1188	12, 14 15, 17, 19, 23, 26, 37, 40, 41
Fidelity Union Trust Co. v. Field, 311 U.S. 169, 61 S. Ct. 176, 85 L. Ed. 109	19
Gelpcke v. Dubuque, 1 Wall. (U.S.) 175, 17 L. Ed. 520	13, 15, 17 20, 22, 23, 25, 26, 33, 35, 36, 37, 39
Getz v. Belleair, Town of, 120 Fed. (2nd) 494	24, 25
Getz v. Belleair, Town of, 314 U.S. 666, 86 L. Ed. 90, 62 S. Ct. 125	24, 25

ALPHABETICAL LIST OF AUTHORITIES CITED

(Continued)

Cases	Page
Gilchrist v. Interborough Rapid Transit Co., 279 U.S. 159, 49 S. Ct. 282	52
Harter Township v. Kernochan, 103 U.S. 562, 26 L. Ed. 411	32
Havemeyer v. Iowa County, 3 Wall. (U.S.) 294, 18 L. Ed. 38	37
Humphreys v. State, ex rel. Palm Beach Co., 108 Fla. 92, 145 So. 858	22, 41
Jefferson County v. Hawkins, Trustee, 23 Fla. 223, 2 So. 362	48
Lee v. Bond-Howell Lumber Co., 123 Fla. 202, 166 So. 733	23, 41
Moffat Tunnel Improvement District v. Boynton, 287 U.S. 620, 53 S. Ct. 20, 77 L. Ed. 538	36
Morin v. City of Stuart, 111 Fed. (2nd) 773	54
Ohio Life Insurance & Trust Company v. DeBolt, 16 How. (U.S.) 416, 14 L. Ed. 997	37
Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 309 U.S. 4, 60 S. Ct. 215	41
Olcott v. Fond du Lac County, 16 Wall. (U.S.) 678, 21 L. Ed. 382	37
Outman v. Cone, 141 Fla. 196, 192 So. 611	9, 10, 27, 29, 30, 34, 35
Pierce v. Isaac, 134 Fla. 666, 184 So. 509	29
Plattsmouth, City of, v. Fitzgerald, 10 Neb. 401, 6 N.W. 470	49
Railroad Commission v. Pullman Co., 312 U.S. 496, 61 S. Ct. 643	53
Russell v. Todd, 309 U.S. 280, 60 S. Ct. 527, 84 L. Ed. 754	19
State v. Citrus County, 116 Fla. 676, 157 So. 4	28, 33, 35
State v. Miami, City of, 103 Fla. 54, 137 So. 261	8, 28, 33, 35
State v. Miami, City of, 116 Fla. 517, 157 So. 13	28, 33, 35

ALPHABETICAL LIST OF AUTHORITIES CITED

(Continued)

Cases	Page
State v. Sarasota County, 118 Fla. 629, 159 So. 797	5, 10, 29, 33, 35, 45
State v. Special Tax School Dist. No. 5 of Dade County Fla., 107 Fla. 93, 144 So. 356	8, 12, 27, 33, 35
State ex rel. Gillespie v. Walthal, 124 Fla. 866, 169 So. 552	48
State ex rel. Nuveen v. Greer, 88 Fla. 249, 102 So. 739	22, 25, 41
Sullivan v. Tampa, City of, 101 Fla. 298, 134 So. 211	6, 7, 9, 10, 12, 13 24, 27, 33, 35, 41
Swift v. Tyson, 16 Peters 1, 10 L. Ed. 865	17, 19, 41
Taylor v. Ypsilanti, 105 U.S. 60, 26 L. Ed. 1008	37
United States ex rel. Horigan v. Heyward, Mayor, et al., 98 Fed. (2nd) 433	54
Vandenbark v. Owens-Illinois Glass Co., 311 U. S. 538, 61 S. Ct. 347, 85 L. Ed. 327	19
West v. American Telephone and Telegraph Co., 311 U. S. 223, 61 S. Ct. 179, 85 L. Ed. 139	19
Wichita Royalty Company v. City National Bank of Wichita Falls, 306 U.S. 103, 59 S. Ct. 420, 83 L. Ed. 515	19
General Works	
American Jurisprudence, Vol. 14, Page 345	37
Blackstone's Commentaries	39
Bracton	39
Coke upon Littleton	39
Corpus Juris, Vol. 44, Page 1239, Sec. 4227	49
Federalist Papers	39
Kent's Commentaries	39
McQuillan on Municipal Corporations, Vol. 5, Page 4930, Sec. 2349, Note 96	49
Municipal Bonds (A. M. Hillhouse) (Page 367)	44

ALPHABETICAL LIST OF AUTHORITIES CITED (Continued)

Legal Publications.	Page
Illinois Law Review, Vol. 35, Page 121	38, 39, 40, 41, ix
Retrospective Operation of Overruling Decisions (Snyder)	38, 39, 40, 41, ix
Statutes, Rules and Constitutional Provisions.	
Amendment to Section 6, Article IX,	
Florida Constitution	5, 6, 9, 26, 28
Chapter 11,855, Laws of Florida,	
Acts of 1927	8, i
Chapter 15,772, Laws of Florida,	
Acts of 1931	8, iv
Compiled General Laws of Florida, Sec. 87	40
Compiled General Laws of Florida, Sec. 5106, et seq.	3
Federal Rules of Civil Procedure,	
Rule 8, Paragraph (a), Subdivision (3)	50
Florida Constitution of 1885	26
Florida Constitution, Section 6, Article IX	5, 26
Florida Constitution,	
Section 6, Article IX, as amended	5, 6, 9, 26, 28
General Refunding Act of 1927, Chapter 11,855,	
Acts of 1927, Laws of Florida	8, i
General Refunding Act of 1931, Chapter 15,772,	
Acts of 1931, Laws of Florida	8, 28, iv
Judicial Code, Sec. 240(a)	1
Laws of Florida, Chapter 11,855, Acts of 1927	8, i
Laws of Florida, Chapter 15,772, Acts of 1931	8, 28, iv
Revised General Statutes of Florida, Sec. 71	40
Revised General Statutes of Florida, Sec. 3296, et seq.	3
United States Code Annotated, Title 28, Sec. 347(a)	1

In the Supreme Court of the United States

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OPINIONS BELOW

No opinions were filed in the District Court. The opinions filed in the Circuit Court of Appeals appear in the Record (R. 189, 198). These opinions are reported in 134 Fed. (2nd) 202.

STATEMENT OF THE GROUNDS ON WHICH JURISDICTION IS INVOKED

Petitioners sought a writ of certiorari, under Section 240 (a) of the Judicial Code, as amended, Title 28 U.S.C.A., Section 347 (a), to review a final judgment of the Circuit

Court of Appeals for the Fifth Circuit. The grounds or reasons, which petitioners conceived should impel this Court to review the judgment are set out in the petition (pages 16 to 18). Since the petition has been granted, we refrain from repeating them.

STATEMENT OF THE CASE

In July, 1933, the City of Winter Haven had an outstanding bonded indebtedness of approximately \$2,148,054.78, principal and interest (R. 3, 4, 27).

The accumulated defaulted interest, as of April 1, 1933, was approximately \$195,000.00, and the defaulted principal amounted to around \$375,000.00, and the City had been in default in payment of its bonded indebtedness since 1931 (R. 4).

By a resolution adopted July 24, 1933, the City authorized the issuance of its General Refunding Bonds, Issue of 1933, dated April 1, 1933, for the purpose of refunding its outstanding bonded indebtedness (R. 27-84).

The refunding issue was divided into Series "A" bonds, to be exchanged for the outstanding 6 per cent obligations, and Series "B" bonds, to be exchanged for the outstanding 5½ per cent obligations (R.4).

The originally outstanding bonds consisted chiefly of bonds which matured serially from 1930 to 1962 (R. 28-57, 64 and 65).

The General Refunding Bonds, Issue of 1933, postponed all maturities to April 1, 1948, and serially thereafter to April 1, 1963 (R. 5, 11).

An amendatory resolution, adopted March 7, 1934, changing the denominations of certain refunding bonds so as to provide for a more convenient exchange with the holders of outstanding obligations in odd amounts, appears on pages 86 to 93 of the Record.

The authorizing resolution described in detail the outstanding bonds to be refunded (R. 28-57 and 64-65), and also specified the numbers, amounts and maturity dates of the 1933 refunding bonds proposed to be issued (R. 58 and

66), and provided a definite scheme of exchange of new bonds for old bonds, so that it will always be possible for the holder of a General Refunding Bond, of the Issue of 1933, to identify the particular original bond that was refunded by any particular 1933 bond which he holds (R. 19 and 82).

The General Refunding Bonds, Issue of 1933, were validated in statutory bond validation proceedings, under the provisions of **Section 3296, et seq., Revised General Statutes of Florida, Sections 5106, et seq., Compiled General Laws.**

They were not sold on the open market, but were issued in exchange for a corresponding amount of original outstanding obligations of the City, in accordance with the authorizing resolution, which outstanding securities were cancelled and surrendered (R. 21).

As has been stated, the original outstanding debt bore interest at the rate of 6 per cent and $5\frac{1}{2}$ percent, respectively. The 1933 refunding bonds bear semi-annually maturing interest at the rate of $3\frac{1}{2}$ per cent from April 1, 1933 to April 1, 1935, 4 per cent from April 1, 1935 to April 1, 1936, $4\frac{1}{2}$ per cent from April 1, 1936 to April 1, 1937, 5 per cent from April 1, 1937 to April 1, 1943, and thereafter at the rate of 6 per cent in the case of Series "A" bonds (R. 7) and $5\frac{1}{2}$ per cent in the case of Series "B" bonds (R. 13). The differential between the interest rate borne by the original outstanding debt and the semi-annually maturing interest borne by the new refunding bonds for the ten-year period from April 1, 1933, to April 1, 1943, is referred to in the bonds as deferred interest (R. 7 and 13). Payment of the deferred interest was postponed to the final maturity of the refunding bonds, except as hereafter stated (R. 7, 13 and 75).

The originally outstanding bonds were non-callable bonds, each being payable on a definite maturity date, and were not subject to call for redemption prior to maturity (R. 3):

The General Refunding Bonds, Issue of 1933, are callable bonds, the City reserving the right to call and

redeem such bonds, on any interest payment date, by paying a portion of the deferred interest, according to the following schedule:

On or prior to April 1, 1943, the bonds could be called at par, and accrued interest at the rate then prevailing, plus one-half of the deferred or accumulated interest for the ten-year period.

On or prior to two years before maturity of the respective bonds, and during the period of time from April 1, 1943, to and including April 1, 1953, the bonds could be called at par, and accrued interest at the rate then prevailing, plus three-fourths of the deferred or accumulated interest for ten years.

From April 1, 1953, to and including April 1, 1963, the bonds could be called at par, and accrued interest at the prevailing rate, plus the full deferred or accumulated interest for ten years (R. 7, 13, 73 and 74).

Thus the holders of the originally outstanding bonds were induced to surrender their non-callable obligations and to accept in lieu thereof bonds which could be called for redemption by the City, at any time that the City might be able to take advantage of a "cheap money market" by selling new bonds and using the proceeds of such sale to call and retire the 1933 refunding bonds prior to their contract maturity dates.

In the event that the City should exercise its option to call the refunding bonds at a time when low interest rates might prevail, the refunding bondholders would of course be forced to re-invest their funds in a low interest market.

As a consideration for accepting a bond with such a callable feature, it was provided that the bondholder would not completely sacrifice his right to interest at the former contract rate of $5\frac{1}{2}$ or 6 per cent, but would recover, to some extent, the difference between the interest borne by the original non-callable bonds surrendered and the reduced rate of semi-annually maturing interest borne by the 1933 General Refunding Bonds containing the call provision.

It is common knowledge that a call provision renders municipal bonds less desirable from the standpoint of long-term investors, such as insurance companies and savings banks, and tends to depreciate their market value and to hamper their ready negotiation or sale, as has been judicially noticed by the Florida Supreme Court in the case of **State v. Sarasota County**, 118 Fla. 629, 159 So. 797, decided in 1935.

Section 6 of Article IX of the Florida Constitution, as originally adopted, provides that:

"The Legislature shall have power to provide for issuing **State bonds** only for the purpose of repelling invasion or suppressing insurrection, or for the purpose of redeeming or refunding bonds already issued, **at a lower rate of interest.**" *

It will be noted that **no limitation** was placed upon the power of the Legislature to authorize the issuance of **municipal bonds**.

On November 4, 1930, **Section 6 of Article IX**, was amended so as to read as follows:

"The Legislature shall have power to provide for issuing **State bonds** only for the purpose of repelling invasion or suppressing insurrection, and the **counties, districts or municipalities** of the State of Florida shall have power to issue bonds **only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such counties, districts, or municipalities shall participate**, to be held in the manner to be prescribed by law **but the provisions of this law shall not apply to the refunding of bonds issued exclusively for the purpose of refunding of the bonds or the interest thereon of such counties, districts, or municipalities.**"

* Note: Emphasis has been supplied in some of the quotations in this brief.

It will be noted that, in the amendment, the provision for a "lower rate of interest" in relation to refunding bonds has been **dropped**, and that it **never did apply** to refunding bonds issued by **municipalities**.

Prior to the issuance of the City of Winter Haven General Refunding Bonds, Issue of 1933, there were no decisions of the Florida Supreme Court indicating that an issue of refunding bonds not authorized at a freeholder election must bear a lower rate of interest than the bonds refunded, and no decisions of that court that threw any doubt upon any of the provisions of the Winter Haven General Refunding Bonds.

On the other hand, the Florida Court in the case of **Sullivan v. City of Tampa**, 101 Fla. 298, 134 So. 211, decided in 1931, upheld an issue of refunding bonds of the City of Tampa, bearing interest at the rate of 5½ per cent per annum, that were issued to refund a like amount of 5 per cent bonds.

Mr. Justice Brown speaking for the Court, in an opinion unanimously concurred in, discussed at great length the contention raised by the intervening appellant taxpayer that the City of Tampa could no longer issue refunding bonds bearing a higher rate of interest than the obligations to be refunded, without the issuance of such refunding bonds having been first approved by a majority vote of the freeholder electors of the municipality, because of the provisions contained in amended **Section 6, of Article IX, of the Florida Constitution**, adopted at the general election held November 4, 1930.

The Court held that the constitutional amendment did not deprive a municipality of the power to issue refunding bonds at a rate of interest greater than the rate borne by the obligations to be refunded, without a freeholder vote, saying, at pages 217 and 218 of 134 So.:

"The constitutional amendment unquestionably authorizes the issuance of refunding bonds without a vote of the people, and this court would not be

authorized to add to the language of the constitutional amendment a condition not therein expressed; that is, by addition of a provision that such refunding should not be permitted unless the refunding bonds should bear no higher rate of interest than the original obligations and should not be sold for less than their full par value. It is the function of this court to construe and interpret constitutional amendments and not to make them. The constitutional amendment plainly provides for the issuance of refunding bonds issued exclusively for the purpose of refunding the bonds or the interest thereon of such counties, districts, or municipalities. The dictionary meaning of the word 'refund' is 'to fund again or anew; to replace (a fund or loan) by a new fund.' It is also a matter of common knowledge that refunding obligations cannot always be accomplished without holding out to the creditor some inducement in the form of an increase in the rate of interest or otherwise, which would cause him to be willing to surrender his existing bonds and take the refunding bonds instead. * * *

"It will be noticed that the only limitation upon the power of counties, districts, and municipalities to issue refunding bonds which is contained in the constitutional amendment is that such bonds be issued exclusively for the purpose of refunding the bonds or the interest thereon of such counties, districts or municipalities. The constitutional provision contains no express language which purports to fix or limit the rate of interest which the refunding bonds shall bear, or to fix the price at which they may be sold. Being wholly silent as to such matters, and no such limitations being clearly implied from the use of the terms in the amendment itself, none will be implied by the court. * * *. It is quite probable that the difference between the amount which may be realized from the sale of the refunding bonds and the amount of the original

obligations which are to be refunded must be paid out of the general funds of the city, but if this is done it will not increase the bonded debt of the city."

The bonds then under consideration were being issued under the authority of the **General Refunding Act of 1927, Chapter 11,855, Acts of 1927.**

Subsequent to the decision in the case of **Sullivan v. City of Tampa**, the Legislature enacted the **General Refunding Act of 1931, Chapter 15,772, Acts of 1931**, with provisions similar to those of the **General Refunding Act of 1927**, including the provisions that interest on refunding bonds should not exceed 6 per cent, and that the refunding bonds should not be sold for less than 95 per cent of their par value, which provisions had been construed, upheld and applied in the **Sullivan case**.

The pertinent provisions of these Legislative Acts are set out in Appendix A and Appendix B.

The **Sullivan case** was cited with approval in **State v. City of Miami**, 103 Fla. 54, 137 So. 261, decided October 13, 1931.

In October, 1932, the Supreme Court of Florida decided the case of **State v. Special Tax School District No. 5, of Dade County**, 107 Fla. 93, 144 So. 356.

In that case, a school district had bonds outstanding that were issued in 1926. They were to mature within thirty years from the date of issuance, as required by another section of the Constitution. It was held that the district might issue refunding bonds in 1932, which need not mature within thirty years from the year 1926, as prescribed for the original bonds, but that the maturities of the refunding bonds might extend beyond the period of thirty years from 1926, and that no freeholder election to authorize the issuance of such refunding bonds was required, although it was recognized that such an extension of maturities would add to the total interest burden to be borne by the district.

The case affirms the holding in the **Sullivan case**, and reiterates that the Court will read nothing into the constitutional amendment, by implication.

On December 22, 1939, nine years after the amendment to **Section 6 of Article IX** of the **Florida Constitution**, more than eight years after the decision in the case of **Sullivan v. City of Tampa**, and more than six years after the adoption of the resolution authorizing the issuance of the City of Winter Haven General Refunding Bonds, Issue of 1933, and several years after the 1933 bonds had been exchanged for the originally outstanding bonds of the City of Winter Haven, the Supreme Court of Florida decided the case of **Outman v. Cone**, 141 Fla. 196, 192 So. 611.

In that case, the Florida Court did what in the **Sullivan case**, it had held it could not do, namely, it read into the constitutional amendment, by implication, a provision to the effect that a refunding bond not authorized at a freeholder election must bear a lower rate of interest than the bond refunded; otherwise, the necessary expense of refunding, added to the existing interest rate, would increase the obligation of the bond and prevent the bond from being such a refunding bond as is contemplated by the provision of the constitutional amendment permitting only refunding bonds to be issued without an approving election.

The court therefore held that a provision for the payment of deferred interest at the original rate, less previous payments, where the refunding bonds had not been authorized by the freeholders, was illegal and void.

The court grounded its decision, in part at least, upon the propositions (1) that it was admitted by counsel for the parties litigant that the provisions for deferred interest involved in that case were ambiguous and the taxpayer was entitled to know what his obligation was, and (2) that no good reason was shown to the court for a provision in the bond contract in that case that a greater proportion of deferred interest was to be paid if payment on call should be made with the proceeds of the sale of

new refunding bonds than if payment on call were made from sinking fund moneys.

It will be demonstrated in the Argument that all of the parties litigant in the Outman case were interested in invalidating the deferred interest provisions there involved, and cooperated to obtain that result, and that the opinion makes no reference to the case of **Sullivan v. City of Tampa**, or other cases inconsistent with the Outman decision, including the decision in the case of **State v. Sarasota County**, 118 Fla. 629, 159 So. 797, decided March 4, 1935, wherein it was held that, notwithstanding the constitutional amendment, refunding bonds might be issued, without an election, providing for currently maturing interest at a reduced rate, and providing for the payment of deferred interest to the full amount of the interest rate borne by the bonds being refunded, as a consideration to the refunding bond takers for accepting a callable bond in lieu of an original bond which was non-callable.

Subsequent to the decision in **Outman v. Cone**, the City of Winter Haven authorized the issuance of new refunding bonds to refund its General Refunding Bonds, Issue of 1933, dated April 1, 1933, but repudiated all the provisions of the 1933 bonds relative to deferred interest (R. 22, 23).

In the months of August and September, 1941, the City of Winter Haven published a notice purporting to call for redemption its General Refunding Bonds, Issue of 1933, including bonds owned and held by the present petitioners, without providing for the payment of any portion of the deferred interest (R. 23, 97).

On September 9, 1941, petitioners filed their complaint in the District Court, showing that they were the holders of General Refunding Bonds, Issue of 1933, both Series "A", and Series "B", of the total amount of \$297,900.00 (R. 22, 94-96).

By their complaint, the petitioners sought to establish their right to the payment of deferred interest, as provided in their bond contract (R. 24).

In the event that the Court should hold that the de-

ferred interest provisions of the 1933 bonds were invalid, then petitioners sought to be subrogated to the rights of the holders of the original bonds which had been surrendered for the 1933 refunding bonds (R. 25).

In seeking this alternative relief, petitioners relied upon the provisions of the resolution authorizing the 1933 refunding bonds to the effect that if any of the 1933 refunding bonds should be adjudged illegal or unenforceable, in whole or in part, the holders thereof should be entitled to assume the position of holders of a like amount of the indebtedness thereby provided to be refunded and as such to enforce their claim for payment (R. 20, 83).

On September 13, 1941, the Supreme Court of Florida, four days after the filing of the complaint in this case, decided the case of **George Andrews v. City of Winter Haven**, reported in **148 Fla. 144, 3 So. (2nd) 805**, holding the deferred interest provisions of the Winter Haven General Refunding Bonds, Issue of 1933, to be invalid and unenforceable.

However, the provision of the resolution under which a bond holder is to be subrogated to the position of a holder of the original bonds, in the event the refunding bond contract should be declared invalid or unenforceable, in whole or in part, was not called to the attention of the Florida Courts.

On September 27, 1941, the City of Winter Haven and its defendant officials filed their motion to dismiss the complaint in this cause, on the ground that the questions of law involved had been determined by the Supreme Court of Florida adversely to the petitioners (R. 98).

The District Court granted the motion to dismiss but allowed the petitioners to amend their complaint (R. 100).

The petitioners amended the complaint so as to demonstrate that the **Andrews case**, although purportedly brought by a bondholder, for the purpose of establishing the validity of the deferred interest provisions of the City of Winter Haven 1933 refunding bonds, was in fact brought for the purpose of invalidating the deferred interest provisions. The amendment showed that Andrews

was a substantial property owner and taxpayer of the City of Winter Haven, whose property holdings were at least as extensive as his purported bond holdings (R. 102-103). The amendment further showed that no process had been issued in the **Andrews suit**, but that all the pleadings of all the parties had been filed, the argument held, and the decree signed and filed, in the course of a single morning (R. 103, 105), as demonstrated by a certified transcript of the record of the proceedings in the **Andrews suit** attached to the amendment as an exhibit (R. 109-179). The amendment further showed that the briefs filed in behalf of George Andrews, purporting to protect the interests of the bondholders of the City of Winter Haven, made no reference to the cases of **Sullivan v. City of Tampa**, and **State v. Special Tax School District No. 5 of Dade County**, or any other cases which had been decided by the Supreme Court of Florida prior to the time of the issuance of the Winter Haven General Refunding Bonds, Issue of 1933, and that no effort whatever had been made on behalf of George Andrews to direct the attention of the Florida Supreme Court to the fact that it had announced and declared a contrary principle of law, prior to the time when the Winter Haven refunding bonds were issued, or to invoke the doctrine of both the State and Federal courts that the law to be applied in considering a contract is the law which existed or had been judicially declared at the time when the contract was made. (R. 105-107).

By stipulation of counsel, the motion to dismiss the original complaint in the present case was made applicable to the complaint as amended, the respondents thereby admitting as true the facts set out in the complaint and in the amendment (R. 181 and 182).

The defendants took the position that, under the doctrine of **Erie Railroad Company v. Tompkins**, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188, and subsequent cases, the Federal Court was bound to follow the latest decisions of the Supreme Court of Florida in determining the validity of the deferred interest provisions, also that the petitioners were not entitled to assume the position of holders

of the original bonds and as such to enforce the original interest rate, on the ground that the 1933 refunding bonds had not been invalidated as a whole, but that the deferred interest provisions had been declared to be a severable portion of the bond contract which could be invalidated without affecting the validity of the remainder of the contract.

The petitioners contended that the law to be applied by the Federal Court was the law of Florida as it had been announced and declared by the Supreme Court of the State at the time when the bonds were issued, and that the Florida Supreme Court, itself, had held it to be the law in Florida that the rule of decision to be applied in considering a contract is the rule announced prior to the making of the contract, in reliance upon which the contract was made, even though the Court, after the making of the contract, has reached a different decision.

The petitioners further contended that the language of the resolution authorizing the bonds clearly entitled the petitioners to assume the position of holders of a like amount of the original bonds and as such to enforce their claim for payment, in the event that any part of the refunding bond contract should be adjudged illegal or unenforceable (R. 20).

On June 6, 1942, the District Judge dismissed the complaint, as amended, and ordered that the defendants go hence without day.

From that order an appeal was taken.

The present petitioners assigned as error the action of the District Court in not following the case of **Sullivan v. City of Tampa**, 101 Fla. 298, 134 So. 211, the Florida Court having previously adopted and followed the "principle of reliance" upon former decisions, as announced in **Gelpcke v. Dubuque**, 1 Wall. (U. S.) 175, (See **Columbia County Commissioners v. King**, 13 Fla. 451.)

Petitioners also specified error in that, after holding the deferred interest provisions of the bond contract to be illegal or unenforceable, the District Court further held that the petitioners were not entitled to assume the posi-

tion of holders of a like amount of the bonds refunded and as such to enforce their claim for payment.

The Circuit Court, erroneously as we contend, decided that the state of the law in Florida on the matters in issue is not clear, settled and stable, and that the Federal courts, though possessing jurisdiction, should decline to exercise it, leaving the petitioners to their remedy in the State courts. Accordingly, the Circuit Court reversed the judgment of the District Court, and dismissed the cause, without prejudice to petitioners' right to proceed in the State courts (R. 200).

Judge Sibley filed a dissenting opinion, in which he took the position that, there being a presently acute, justiciable controversy, the Federal Court was bound to declare the rights of the parties, since the same power and the same duty to decide cases applies to cases between citizens of different states arising under the laws of a state as applies to controversies arising under the Constitution and laws of the United States, and since this case involves no invasion of high state functions or policies as to which caution is due, but only the question of how much this City owes these bondholders on calling their bonds for payment before due.

Judge Sibley apparently thought, however, that the doctrine announced in **Erie Railroad Company v. Tompkins**, 304 U. S. 64, 58 S. St. 817, 82 L. Ed. 1188, required the Court to follow the **Andrews case** and hold invalid the provision for payment of a part of the deferred interest on call of the bonds, but that justice should be done by remitting the bondholder to his interest rights under the old bonds to the extent necessary to make good the loss caused by the partial unenforcibility of the new bonds (R. 198).

On February 22, 1943, a petition for rehearing (R. 201) was filed by appellants (petitioners), in which they insisted, among other things, that the Circuit Court had considered, sua sponte, matters which the appellants (petitioners) had had no opportunity to argue, and had decided to remit them to their remedy in the State courts.

even though the appellants (petitioners), who were citizens of another state and had shown the jurisdictional amount in controversy, had not had an opportunity to insist that their contract rights be adjudicated in the Federal courts, and that the decisions cited in the majority opinion to support the action of the Court in remitting them to their remedy in the State courts are essentially different from this case.

On March 12, 1943, an order denying the petition for rehearing was entered (R. 206).

On May 24, 1943, the Supreme Court granted the petition of the original plaintiffs for writ of certiorari (R. 209).

SPECIFICATIONS OF ERRORS INTENDED TO BE ARGUED

Since it is provided in Rule 38, paragraph 2, that only the questions specifically brought forward by the petition for writ of certiorari will be considered, we confine our argument to the following questions, which were brought forward by the petition, and which we deem to be of important and general interest:

1. Is the validity of a contract to be determined upon the basis of the decisions that were announced by the highest court of the state prior to the making of the contract, where the State Court has itself adopted the "principle of reliance" announced in **Gelpcke v. Dubuque**, or does the doctrine of the **Erie Railroad case** require that the validity of the contract be determined upon the basis of the "latest" State Court decisions?

2. Where a contract (refunding bond contract) provides that "if any of the bonds hereby authorized be adjudged illegal or unenforceable, in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment," and where the decisions of the highest court of the state where the contract was made are in harmony with the validity of this provision, if the Federal courts

should be of the opinion that the particular contract in question cannot be enforced in all respects as written, because of State Court decisions announced after the contract was made, but must therefore be adjudged "illegal or unenforcible, in whole or in part," should not the holders of the refunding bonds be held entitled to assume the position of holders of a like amount of the indebtedness refunded and as such to enforce their claim for payment?

3. In a case where the Federal jurisdiction has been invoked, by citizens of another state, who have shown that the jurisdictional amount is involved, and where there is an actual controversy presenting justiciable issues requiring determination and entitling plaintiffs (petitioners) to a declaratory judgment and an injunction in support of such declaration, and where the parties to the controversy have litigated the matter both in the District Court and in the Circuit Court of Appeals, without objection or protest, should not the Federal courts decide the controversy, in the light of the State Court decisions bearing upon the contract rights of the litigants, rather than to remit the plaintiffs (petitioners) to their remedy in the State courts, it being a fact that the case presented involves no invasion of high state functions or policies, but only the question of how much a public corporation debtor owes the plaintiffs (petitioners) under its contract with them?

ARGUMENT

Summary

1. Before the making of the refunding bond contract involved in this proceeding, the decisions of the Florida Supreme Court having a bearing upon the subject indicated that the contract was legal and valid in all respects, even though not providing for a reduction in the rates of interest borne by the bonds being refunded, notwithstanding the provisions of an amendment to the Florida Constitution to the effect that bonds can be issued by municipalities, only after being approved by the affirmative vote of a majority of the freeholders, except that no

such election is necessary in the case of refunding bonds. Although the Florida Supreme Court has since receded from this position, and has now held that refunding bonds must also be authorized at a freeholder election, unless there is a reduction in the interest rate, the Supreme Court of the United States, at the time of the issuance of the bonds here involved, was definitely committed to the doctrine announced in such cases as **Gelpcke v. Dubuque**, 1 Wall. (U.S.) 175, to the effect that the true rule in such cases is that, if the contract, when made, was valid by the laws of the State, as then expounded and administered in its courts of justice, it is still valid, notwithstanding any later decisions overruling the former ones, which rule is sometimes referred to as the "principle of reliance" upon the former decisions, or as the "contract exception" to the general rule that the courts will follow the "latest settled adjudications," and the Florida Supreme Court, prior to the making of the bond contract here in question, had adopted and consistently adhered to this "principle of reliance," or "contract exception." The Florida Supreme Court has never receded from its position in this regard, in any case where the question has been definitely brought before it for decision. It is submitted that, notwithstanding the decision in the **Erie Railroad case**, overruling the doctrine of **Swift v. Tyson**, and notwithstanding the later decisions in which the doctrine of the **Erie case** is considered and applied, the contract is still to be construed, interpreted and enforced, in accordance with the law as it was expounded and administered in the courts at the time when the contract was made.

2. Furthermore, it was provided in the particular bond contract in question that, "if any of the bonds hereby authorized be adjudged illegal or unenforceable, in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded, and as such enforce their claim for payment." The decisions of the Florida Supreme Court support the validity of this provision. Hence, even if the particular refunding bond contract in question

cannot be enforced in all respects as written, because of the later Florida decisions as to the necessity for freeholder authorization of the refunding bonds, but is adjudged "illegal or unenforcible, in whole or in part," the holders of the refunding bonds are nevertheless entitled to assume the position of holders of a like amount of the indebtedness refunded and as such to enforce their claim for payment.

3. Finally, this being a case where the Federal jurisdiction has been invoked by citizens of another state, who have shown that the jurisdictional amount is involved, and there being an actual controversy presenting justiciable issues requiring determination and entitling plaintiffs (petitioners) to a declaratory judgment and an injunction in support of such declaration, and the parties to the controversy having litigated the question both in the District Court and in the Circuit Court of Appeals, without objection or protest, the Circuit Court of Appeals should not have refused to decide the controversy, and should not have remitted the plaintiffs (petitioners) to their remedy in the State courts, it being a fact that the case presented involves no invasion of high state functions or policies, but only the question of how much a public corporation debtor owes the plaintiffs (petitioners) under its contract with them.

First Question

Is the validity of a contract to be determined upon the basis of the decisions that were announced by the highest court of the State prior to the making of the contract, where the State Court has itself adopted the "principle of reliance" announced in *Gelpcke v. Dubuque*, or does the doctrine of the *Erie Railroad* case require that the validity of the contract be determined upon the basis of the "latest" State Court decisions?

To be more specific, this question might be stated thus:

Where the highest court of a state has placed a given construction on a provision of the State Constitution, and municipal bonds are thereafter issued in accordance with,

and accepted in reliance upon such construction, and after such bonds are issued, the State Court, in a subsequent decision, changes its previous construction, but the State Court decisions consistently hold that a contract is governed by the law as announced at the time of its making, and is protected from any subsequent decisions overruling those decisions on which the parties have relied in making such contract, should not the Federal courts, in determining the validity of the bond contract, apply that construction which had been declared by the State Court at the time when the bonds were issued?

The Duty of the Federal Courts to Follow State Decisions

We fully realize that the doctrine of **Swift v. Tyson**, 16 Peters 1, 10 L. Ed. 865, has been overruled by the case of **Erie Railroad Co. v. Tompkins**, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188.

It is conceded that the Federal courts, in cases where jurisdiction is predicated solely on diversity of citizenship, are required to apply the State law, as declared by the State courts, including matters of general law, as well as local law, no matter how unreasonable or ill-advised such decisions may seem.

See: **Wichita Royalty Company v. City
National Bank of Wichita Falls**,
306 U. S. 103, 59 S. Ct. 420, 83 L. Ed. 515;

Russell v. Todd,
309 U. S. 280, 60 S. Ct. 527, 84 L. Ed. 754;

Fidelity Union Trust Co. v. Field,
311 U. S. 169, 61 S. Ct. 176, 85 L. Ed. 109;

**West v. American Telephone & Telegraph
Co.**, 311 U. S. 223, 61 S. Ct. 179, 85 L. Ed.
139;

Vandenbark v. Owens-Illinois Glass Co.,
311 U. S. 538, 61 S. Ct. 347, 85 L. Ed. 327;

We do not contend that either the District Court or the Circuit Court should have disregarded the State law, and exercised its independent judgment, to determine what the State law **should be**, in passing upon the plaintiffs' bond contract.

What we do contend is that the District Court disregarded and failed to follow the applicable law of Florida, as declared by the Supreme Court of the State, in deciding the questions which were presented, and that the Circuit Court should have reversed the judgment of the District Court, because of the failure of the District Court to follow the applicable Florida law, instead of remitting the parties to their remedy in the State courts.

**The Law of Florida is that a Contract is Governed
by the Law as Declared at the Time when
the Contract was Made.**

and Some seventy years ago, the Supreme Court of Florida decided the case of **Columbia County Commissioners v. King**, 13 Fla. 451. In that case, the Court refused to hold "railroad bonds" invalid, under a former Florida Constitution, because of the fact that, in the case of **Cotten v. County Commissioners of Leon County**, 6 Fla. 610, decided in 1856, about the time the Columbia County bonds "were being issued," the Court had held such bonds to be valid.

The Court, speaking through Mr. Chief Justice Randall, pointed out that the case of **Cotten v. County Commissioners of Leon County**, "was pending, if not already decided by the Supreme Court, at the very moment that the earliest of the bonds of Columbia County were being issued, and they thus went forth upon the market and into the hands of third parties, not only sanctioned by the Legislature, but by the Judicial branch of the government." The opinion went on to point out that "in the case of **Gelpcke v. City of Dubuque**, 1 Wallace (U.S.) 175, was involved a similar question." The opinion stated that in the **Gelpcke case**, the Iowa Supreme Court had placed a construction on the Iowa Constitution up-

holding powers exercised by the City of Dubuque in issuing municipal bonds, and quoted with approval from the opinion of Mr. Justice Swayne of the Supreme Court of the United States, as follows :

"The earliest of these cases was decided in 1853, and the latest in 1859, and the bonds were issued and put upon the market between the periods named. These adjudications cover the entire ground of this controversy. They exhaust the argument upon the subject; we could add nothing to what they contain. **We shall be governed by them** unless there be something which takes the case out of the established rule of this court upon that subject. **It is urged that all these decisions have been overruled by the Supreme Court of Iowa in the latter case of the State of Iowa v. the County of Wapello, 13 Iowa, 390. * * *** It cannot be expected that this court will follow every such oscillation, from whatever cause arising, that may possibly occur. * * * However we may regard the late case in Iowa as affecting the **future**, it can have no effect upon the **past**."

The opinion of the Supreme Court of Florida then continued as follows:

"As was said in the case of The Ohio Life and Trust Co. v. Debolt, 16 Howard 432: 'The sound and true rule is, that **if the contract when made was valid** by the laws of the State, as then expounded by all the departments of the government and administered in its courts of justice, **its validity and obligation cannot be impaired by any subsequent legislation or decision of its courts altering the construction of the law.**' 'The same principle applies where there is a **change of judicial decision** as to the **constitutional power** of the legislature to enact the law * * * It rests upon the plainest principles of justice. **To hold otherwise, would be as**

unjust as to hold that rights acquired under a statute may be lost by its repeal."

The opinion of the Florida Supreme Court concluded the discussion of this phase of the case then before it by saying:

"Whatever, therefore, might have been the opinions of the members of this court, upon the question of the constitutionality of the law referred to, the fact that the bonds were issued and passed to the hands of third parties long years ago, that they were sanctioned by the judicial department of the government, and by the acquiescence of the people, it would be an outrage upon public justice, public credit, and the rights of the holders for value of these bonds, now to step in and nullify the solemn adjudication of the highest court of this State, given when these bonds were about being issued, and upon the faith of which they were sold for the means used to promote an important public enterprise, and intended to develop and enhance the prosperity and value of property of the citizens of the State."

The doctrine of the **Columbia County** case and of the **Gelpcke** case has been followed by the Florida Supreme Court ever since the **Columbia County** case was decided, and has never been overruled or superseded.

In the case of **State ex rel. Nuveen v. Greer**, 88 Fla. 249, 102 So. 739, decided in 1924, the Supreme Court of Florida, speaking through Mr. Justice Whitfield, declared that the principle of **Gelpcke v. Dubuque** and **Columbia County v. King**, is a matter of constitutional right, recognized and protected by the Florida Constitution.

In the case of **Humphreys v. State, ex rel. Palm Beach Co.**, 108 Fla. 92, 145 So. 858, Text 861, decided January 17, 1933, six months before the adoption of the resolution authorizing the issuance of the Winter Haven General Refunding Bonds, Issue of 1933, the Supreme Court of Florida said:

"This court has long since held that all the laws which subsist, at the time and place of the making of a contract, and where it is to be performed, enter into and become a part of the contract made, as if they were expressly referred to and incorporated in its terms, including alike those laws which affect its construction, validity, enforcement or discharge," citing **Commissioners of Columbia County v. King**.

The doctrine of **Gelpcke v. Dubuque**, and **Columbia County Commissioners v. King**, was further affirmed by the Supreme Court of Florida in the cases of:

Alta Cliff Co. v. Spurway,
113 Fla. 633, 152 So. 731,

decided on November 28, 1933, rehearing denied March 1, 1934, and

Lee v. Bond-Howell Lumber Co.,
123 Fla. 202, 166 So. 733,

decided March 10, 1936.

The Doctrine of Gelpcke v. Dubuque Has Not Been Overruled

The obligations held by the plaintiffs (petitioners) were incurred on the strength of prior State decisions to the effect that the Florida Constitution permitted the obligations here involved to be incurred, without a freeholder election. The question to be decided is whether or not these obligations are now to be defeated, because of the fact that, since their issuance, the Florida Supreme Court has announced an implied constitutional limitation which, prior to their issuance, it had declared did not exist.

Neither the **Erie Railroad case**, nor any of the other decisions that have followed it, have announced any such doctrine, and it is respectfully submitted that none of such decisions have overruled the **Gelpcke case**. It is true that some of the cases have indicated, as a general proposition, that the Federal courts must follow the latest de-

cisions of the State courts, and that the Federal courts are not at liberty to follow earlier State Court decisions, merely because the Federal Court considers the earlier State Court decisions to be better reasoned, or to reach a more desirable result, than the later decisions overruling them. Nevertheless, it is believed that it has never been held that a State Court decision construing a provision of the Constitution of the State, upon the strength of which decision contract rights have been entered into, is to be disregarded in favor of a later decision overruling the former holding, thereby invalidating the contract, in whole or in part.

As above pointed out, the question of the validity of the deferred interest provisions of the bond contract was not an open one at the time when the bonds in question were issued, but had been settled by the **Sullivan case**. And the point now presented for decision is whether the obligation of the City relative to the deferred interest has been invalidated by the State Court's decision to reverse its previous stand and re-settle the question, after the refunding bond takers had accepted the refunding bonds in exchange for the old ones, since the State Court, itself, has consistently held that bondholders in the position of the plaintiffs (petitioners) are to be protected from the effect of such subsequent decisions.

The respondents insisted, in the District Court, that in the case of **Getz v. Town of Belleair**, 120 Fed. 2nd. 494, the Circuit Court had refused to follow the case of **Gelpcke v. Dubuque**. This contention was first made at the hearing on the motion to dismiss the original complaint. That hearing was held October 14, 1941 (R. 99).

On October 20, 1941, the Supreme Court of the United States denied certiorari in the **Getz case**. **Getz v. Town of Belleair**, 314 U. S. 666, 86 L. Ed. 90, 62 S. Ct. 125.

On March 7, 1942, the District Court entered an order granting the motion to dismiss the original complaint. (R. 100).

At the hearing of the motion to dismiss the complaint as amended, the District Judge announced that his de-

cision to enter the order dismissing the original complaint had been based on the action of the United States Supreme Court in denying certiorari in the **Getz case**.

However, it is apparent that, no matter how strenuously the principle of the **Gelpcke case** may have been argued by counsel in the **Getz case**, there was no occasion to apply the rule of the **Gelpcke case**, because at the time of the issuance of the **Getz (Belleair)** bonds the constitutional provision affecting the bonds held by Mr. Getz had never been construed by the Florida Supreme Court.

Respondents argued that, in applying the rule of **Gelpcke v. Dubuque**, it is immaterial whether the State Court decisions relied upon were announced prior to the issuance of the plaintiffs' (petitioners') bonds or afterwards. Such an argument misses the whole point of the **Gelpcke case**, as stressed by the opinions of the Supreme Court of Florida adopting and following the doctrine of the **Gelpcke case**.

This distinction, which respondents attempted to dismiss as immaterial, was pointedly drawn by the Supreme Court of Florida in the **Nuveen case**. The Court there carefully distinguished between the position of a bondholder who, like Mr. Getz or Mr. Nuveen, takes bonds before the courts have expressed any opinion on a question of law which is thereafter determined adversely to the interests of such bondholder, and that of a bondholder, who, like the plaintiffs (petitioners) in this case, takes bonds in reliance upon a decision of the highest State Court determining a question of law, and who is thereafter confronted with a later decision of the same court overruling the earlier decision and determining the question adversely to his interests.

The Florida Court held that bondholders like Mr. Getz and Mr. Nuveen, when they accept their bonds, take their chances as to what the Supreme Court will eventually decide about their validity under the Florida Constitution, while bondholders like the plaintiffs (petitioners) in this case acquire property rights, under the law as judicially

declared, which are protected by the Florida Constitution from subsequent contrary decisions.

We have shown that the plaintiffs' (petitioners') right to rely upon the law as announced by the highest court of the State at the time when the bonds were issued, and not to be prejudiced by subsequent contrary decisions is a right expressly recognized by the decisions of the Supreme Court of Florida, which have held it to be a right protected by the Florida Constitution. Therefore, even if the case of **Gelpcke v. Dubuque** had been overruled by the Supreme Court of the United States, which it has not, nevertheless, this Court, under the **Erie Railroad doctrine**, would still be under a duty to apply the rule of the **Gelpcke case**, because it has become a principle of local substantive law of the State of Florida, which has been consistently and repeatedly announced and declared by the Supreme Court of Florida, both before and after the bonds in question were issued, and has never been changed.

The Early Cases Construing the Amendment to the Florida Constitution

The **Florida Constitution of 1885** is still in force, although some of its provisions have been amended or supplemented from time to time.

Section 6 of Article IX, as originally adopted, provides that:

"The Legislature shall have power to provide for issuing **State bonds** only for the purpose of repelling invasion or suppressing insurrection, or for the purpose of redeeming or refunding bonds already issued, **at a lower rate of interest.**"

No limitation was placed upon the power of the Legislature to authorize the issuance of **municipal bonds**.

On November 4, 1930, **Section 6 of Article IX**, was amended so as to read as follows:

"The Legislature shall have power to provide for issuing **State bonds** only for the purpose of repelling invasion or suppressing insurrection, and"

the counties, districts or municipalities of the State of Florida shall have power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such counties, districts, or municipalities shall participate, to be held in the manner to be prescribed by law; but the provisions of this law shall not apply to the refunding of bonds issued exclusively for the purpose of refunding of the bonds or the interest thereon of such counties, districts or municipalities." *

The provision for a "lower rate of interest" in relation to refunding bonds has been **dropped**, in the amendment, and it **never did apply** to refunding bonds issued by municipalities.

We have pointed out in the Statement of the Case that immediately after the adoption of the constitutional amendment relied upon by the respondents in this case, and prior to the issuance of petitioners' bonds, the Supreme Court of Florida, in the case of **Sullivan v. City of Tampa**, 101 Fla. 298, 134 So. 211, had decided that, not only was **no reduction in interest** to be borne by refunding bonds **required** by the constitutional amendment, but such amendment **even permitted** refunding bonds to be issued at an **increased rate of interest**, without an approving vote of the freeholders. In that case the court emphatically refused to read into the language of the constitutional amendment the condition or implication which was later announced in the **Outman case**.

We have also shown that, in October, 1932, the court had decided the case of **State v. Special Tax School District No. 5 of Dade County**, 107 Fla. 93, 144 So. 356, re-

* Note: The latter part of the amendment is not confined to bonds issued to refund bonds that have already been refunded, but excepts from the operation of the prior part of the section the issuance of bonds to refund any municipal bonds or the interest thereon when the refunding bonds to be issued are designed merely to extend the time for the payment of the indebtedness. (See: **State v. City of Miami**, 100 Fla. 1388, 131 So. 143, decided December 5, 1930.)

affirming the principle announced in the **Sullivan case**, and that the **Sullivan case** had been cited with approval October 13, 1931, in **State v. City of Miami**, 103 Fla. 54, 137 So. 261.

In September, 1934, about the time that the refunding bonds involved in this suit were being issued, the Supreme Court of Florida decided the case of **Bay County v. State**, 116 Fla. 656, 157 So. 1, in which the court pointed out that **Section 3 of the 1931 Refunding Act**, which also governed the issuance of the bonds here involved, provides that:

"The right to redeem all or any of the bonds at par before maturity may be reserved upon terms and conditions to be fixed by resolution."

The court also held that a provision of the resolution authorizing the refunding bonds involved in the **Bay County Case**, to the effect that, upon stated defaults and conditions, the refunding bonds might revert to the original interest rate of the bonds refunded, was authorized and valid.

In September, 1934, the Supreme Court also decided the case of **State v. Citrus County**, 116 Fla. 676, 157 So. 4.

In that case, the court began to develop the doctrine that the obligation of the original bonds could not be enlarged by the issuance of refunding bonds, without an approving vote of the freeholders, in view of the provision of **Section 6 of Article IX of the Constitution**, as amended in 1930, but in that very case, the Court specifically reaffirmed its holding in the **Sullivan case to the effect that**:

"A mere increase in the interest rate of refunding bonds over the rate specified in the bonds refunded, was not an objectionable enlargement of obligation in violation of the intent of the constitutional amendment, and was therefore not invalid."

In September, 1934, the Supreme Court of Florida also decided the case of **State v. City of Miami**, 116 Fla. 517, 157 So. 13, wherein the court recognized the legality of regulating, without a freeholder election, the future

obligations of the City, in reference to refunding bonds, by relating such obligations to the increased ability of the city to meet them.

On March 4, 1935, the Supreme Court decided the case of **State v. Sarasota County**, 118 Fla. 629, 159 So. 797, wherein it was held that, notwithstanding the constitutional amendment, refunding bonds might be issued, without an election, to provide for currently maturing interest at a reduced rate, and to provide for the payment of deferred interest to the full amount of the interest rate borne by the bonds being refunded, because of the fact that the refunding bonds were made callable, whereas the original bonds to be exchanged therefor had been non-callable.

On October 29, 1938, the Supreme Court of Florida decided the case of **Pierce v. Isaac**, 134 Fla. 666, 184 So. 509, upholding a contract made by the Ocean Shore Improvement District, providing for the refunding of its outstanding refunding bonds, in order that the district might by the issuance of new refunding bonds, relieve itself of its obligation to pay deferred interest on the refunding bonds previously issued by the district, by calling and redeeming such outstanding refunding bonds, while it could still call them without paying any part of the deferred interest, under the terms of the refunding bonds that it proposed to again refund. The court specifically assigned the impending liability for deferred interest as a circumstance justifying the new refunding contract.

The Case of Outman v. Cone

On December 22, 1939, nine years after the adoption of the constitutional amendment above mentioned, the Supreme Court of Florida decided the case of **Outman v. Cone**, 141 Fla. 196, 192 So. 611. At that time, plaintiffs' (petitioners') bonds had long since been issued, in exchange for the original bonds of the City of Winter Haven, which original bonds had been surrendered and cancelled. (R. 21).

In the **Outman case**, the Florida Court announced, for the first time, an implied provision in the constitutional amendment, to the effect that a refunding bond, not authorized at a freeholder election, must bear a lower rate of interest than the bond refunded; otherwise, the necessary expense of refunding, added to the existing interest rate, will increase the obligation.

Upon the basis of this newly announced implication, the court decided that a provision for the payment of deferred interest, at the original rate, less previous payments, where the refunding bonds had not been authorized by the freeholders, was illegal and void.

A certified copy of the transcript of record in the **Outman case** has been obtained from the Supreme Court of Florida and will be submitted for the use of the Court. This certified copy was likewise before the Circuit Court of Appeals, as is shown by the attached certificate of the Clerk of the Circuit Court.

It appears from the transcript of record that W. D. Outman, the plaintiff in that cause, as a resident and taxpayer of St. Petersburg Special Road & Bridge District No. 13, in Pinellas County, Florida, filed a bill of complaint against the Board of Administration of the State of Florida and the County Commissioners of Pinellas County, Florida, in the Circuit Court of Leon County, Florida, on November 18, 1939, attacking the deferred interest provisions of refunding bonds issued by the District.

The bill of complaint consisted of approximately ten legal-size, typewritten pages and had attached two resolutions containing approximately thirty-five pages. The bill of complaint and the exhibits attached appear on pages 1 to 46, inclusive, of the transcript of record above mentioned.

The transcript shows that no process was issued in the case, but that on the very day that the bill of complaint was filed the defendant Board of County Commissioners joined with the Board of Administration in filing a two-page answer, which appears on pages 47 and 48 of the transcript.

The Court will take judicial notice of the fact that Tallahassee, the county seat of Leon County, is more than 200 miles from Pinellas County. It is apparent that the Board of County Commissioners had advance notice of the bringing of the suit.

On pages 6 and 7 of the transcript, it appears that the deferred interest provisions of two issues of bonds totalling \$1,115,000.00 were involved.

From page 58 of the transcript, it appears that, by some remarkable circumstance, one M. E. Smith, claiming to be the holder of one bond of one issue and seven bonds of another issue, had "learned" of the institution of the suit, and that on the very same day that the bill of complaint and the answer were filed, this M. E. Smith was allowed to intervene and to file an answer "on behalf of all holders and owners of bonds issued by St. Petersburg Special Road & Bridge District No. 13 of Pinellas County, Florida, composed of Series A and Series B, and involved in this cause."

His answer appears on pages 58 to 64 of the transcript, and is signed by a firm of attorneys having their offices in St. Petersburg, Pinellas County, Florida.

On pages 65 and 66 of the transcript appears the final decree dismissing the bill of complaint, signed by one of the judges of the Circuit Court of Leon County, dated November 18, 1939, which shows that the pleadings of all parties had been filed, the hearing held, and the final decree entered, all on the same day.

This decision of the lower court was apparently disappointing to all of the parties concerned, for on November 21, 1939, three days after the institution of the suit and the entry of the final decree, a notice of appeal was filed by the plaintiff, W. D. Outman, together with his assignments of error, bearing an acceptance of service by all of the attorneys for the defendants, dated November 21, 1939. (See pages 67-70 of the Outman transcript).

On the same day, counsel for all the parties entered into a stipulation agreeing that the Clerk of the Circuit

Court might proceed immediately with the making up of the transcript, that the transcript might be filed in the Supreme Court of Florida immediately upon its completion, and waiving the rights of the defendants to file additional directions or to file additional assignments of error. (See pages 71-72 of the Outman Transcript).

It is obvious that the interests of the County and those of its taxpayers, in seeking to invalidate the obligation for payment of deferred interest, were identical, and that the interests of the primary litigants therefore were not adverse.

**Harter Township v. Kernochan,
103 U. S. 562, 26 L. Ed. 411.**

So far as these parties were concerned, there was no controversy.

It is apparent that, both as to the principal litigants and as to the intervenor, the decree was virtually a consent decree.

The attorneys for all the parties, including the intervenor, who purported to protect the interests of the bondholders, must have remained in Tallahassee for three days, in order to get up the appeal papers.

The appeal was made returnable December 26, 1939. (See page 68 of the Outman Transcript).

Although under the rules of the Supreme Court of Florida the transcript of record was not due to be filed until the return day of the appeal and the brief of the appellant was not due to be filed until 30 days after the return day, the docket entries show that the transcript of record was filed in the Supreme Court on December 4, 1939, over three weeks before the return day, that the brief of the appellant, W. D. Outman, was filed on December 7, almost three weeks before the return day, and that on December 11, four days after the filing of appellant's brief, there were filed a motion to advance the cause on the docket and for oral argument, the brief of M. D. Smith, the intervenor, the brief of the Board of County

Commissioners, appellees, and a stipulation signed by all counsel of record requesting the court for an immediate decision.

The opinion of the Supreme Court of Florida was filed December 22, 1939, four days prior to the return day fixed in the notice of appeal, and long before the briefs of any of the parties were due to be filed.

It is inconceivable that the case could have been briefed and argued with any degree of thoroughness.

An examination of the opinion reveals no mention whatever of the cases of **Sullivan v. City of Tampa**, **State v. Special Tax School District No. 5 of Dade County, Florida**, **Bay County v. State**, **State v. Citrus County**, **State v. City of Miami**, **State v. Sarasota County**, **Gelpcke v. Dubuque**, **Columbia County Commissioners v. King**, or any decision of that or any other court.

From what we have pointed out above, it will readily appear that the case was not a bona fide lawsuit, but a "made" case, and that it is not entitled to be regarded as a judicial precedent.

The Case of Andrews v. Winter Haven

At the hearing held on the motion to dismiss the original complaint in the instant case, the respondents relied upon a decision of the Supreme Court of Florida which had been rendered between the filing of the complaint and the filing of the motion to dismiss. This decision is reported as **Andrews v. City of Winter Haven**, 148 Fla. 144, 3 So. (2nd) 805.

Upon learning of this decision, plaintiffs (petitioners) made an examination of the record in the cause and sought permission of the District Court to amend the complaint, in the event the motion to dismiss should be granted, so as to properly bring to the attention of the Court certain features of the **Andrews case**.

These features are set forth in the amendment to the complaint, which appears on pages 101 to 108 of the transcript, and in a certified copy of the record in the **Andrews**

case attached as an exhibit to the amendment (R. 109-179).

It has been shown in the statement of facts that, although Andrews purported to bring his suit for the purpose of upholding the deferred interest provisions of the Winter Haven bonds, nevertheless, as a matter of fact, his interests as a property owner were at least equal to his purported interests as a bondholder. The cooperation existing between the so-called plaintiff and the defendant in that case was equally as remarkable as that which has been shown to exist in the **Outman case**. The amendment to the complaint charged that the **Andrews suit** had not been instituted for the purpose of protecting the rights of Mr. Andrews as a bondholder, but had been brought for the purpose of obtaining a decree favorable to the interests of Mr. Andrews as a property owner, and adverse to the interests of the bondholders. This is amply supported by the record. A complete certified transcript of the proceedings in the **Andrews case**, including photostatic copies of all the papers filed, together with the endorsements, was attached to the amendment. Duplicate photostatic copies were included in the certified record transmitted from the District Court (R. 109-179).

A mere inspection of this transcript shows that no genuine effort to protect the interests of the bondholders could possibly have been made or attempted on the part of Mr. Andrews' counsel, for the bill of complaint was filed, answer was made, motion for decree on bill and answer was interposed, the hearing was held, and the decree was signed and filed, all in the course of a single morning, and before the hour of eleven o'clock, although all the counsel lived in Winter Haven, the hearing was held in Lakeland, some twelve miles distant, and the papers were filed in the Courthouse, in Bartow, a distance of some twelve miles from Lakeland. (R. 102-105).

The amendment to the complaint in the instant case also shows that the briefs filed on behalf of Mr. Andrews in the Supreme Court of Florida, pretending to protect the interests of the bondholders of the City of Winter Haven.

made no reference to the cases of **Sullivan v. City of Tampa, State v. Special Tax School District No. 5 of Dade County, Bay County v. State, State v. Citrus County, State v. City of Miami, or State v. Sarasota County** (R. 105-106).

The amendment also shows that no effort whatever was made in the **Andrews case** to invoke the principle, repeatedly announced and consistently adhered to by the Florida courts, that the law as declared and announced at the time when bonds are issued, determines the validity of the bonds, notwithstanding later contrary decisions rendered subsequent to the issuance of the bonds, which principle was announced in the case of **Gelpcke v. Dubuque**, and adopted by the Supreme Court of Florida in the case of **Columbia County Commissioners v. King**, and reaffirmed by the Florida Supreme Court in a number of subsequent decisions (R. 106).

Here again, it is obvious that the case was not a bona fide lawsuit, but a "made" case.

We earnestly contend that such decisions as **Outman v. Cone** and **Andrews v. City of Winter Haven**, in view of the obviously collusive character of those suits, can have no binding effect on any bondholders, except those who were actually parties to such suits and actively participated in bringing about the decisions. Such decisions can amount to no more than consent decrees or orders approving stipulations of the parties, which bind only those who are parties to the stipulations.

The situation in these cases is similar to that which was disclosed in the case of **Boynton v. Moffat Tunnel Improvement District**, 57 Fed. (2nd) 722, (Text 776, 781), in which the Tenth Circuit Court of Appeals pointed out that a bondholder appearing in State Court litigation had so clearly intervened, not for the purpose of protecting the interests of the bondholders, but for the purpose of obtaining a decree adverse to the interests of the bondholders, that no weight could be given to the result of such procedure.

Certiorari was denied.

**Moffat Tunnel Improvement District v.
Boynton, 287 U. S. 620, 53 S. Ct. 20,
77 L. Ed. 538.**

In any event, it is insisted that both the District Court and the Circuit Court, in the instant case, should have applied the rule in **Gelpcke v. Dubuque** and **Columbia County Commissioners v. King**, and subsequent Florida decisions, and held that the Florida decisions applicable to the deferred interest provisions of the plaintiffs' (petitioners') Winter Haven General Refunding Bonds, Issue of 1933, were those decisions which had been rendered at the time when the bonds had been issued and were "about being issued," and that therefore the deferred interest provisions were valid, and that the plaintiffs' (petitioners') bonds could not be called for redemption and the running of further interest thereon stayed, unless called in accordance with the terms of the bonds, which provide for the posting of a prescribed portion of the deferred interest at the time of call.

The Effect upon Contracts of Overruling Decisions

The general rule with reference to the retrospective operation of a decision or a series of decisions overruling a former decision has been stated thus:

"The general principle is that a decision of a court of supreme jurisdiction overruling a former decision is retrospective in its operation, and the effect is not that the former decision is bad law; but that it never was the law. To this the courts have established the exception that where a constitutional or statute law has received a given construction by the courts of last resort, and contracts have been made and rights acquired under and in accordance with such construction, such contracts may not be invalidated, nor vested rights acquired under them impaired by a change of construction made by a subsequent decision. * * * The true rule in such cases is held to be to give a change of judicial construction in respect of a statute the

same effect in its operation on contracts and existing contract rights that would be given to a legislative repeal or amendment; that is, make it prospective, but not retroactive."

14 Am. Jur. 345

This doctrine was definitely announced in the case of **Gelpcke v. the City of Dubuque, 1 Wall. (U. S.) 175.**

It is respectfully submitted that there is nothing in the decision in **Erie Railroad Company v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188**, or in the other decisions that have followed it, which overrules the doctrine of the **Gelpcke case**.

In support of what is referred to in the quotation as the "true rule," the following decisions are cited:

Anderson v. Santa Anna Twp.,

116 U. S. 350, 6 L. Ed. 633, 6 S. Ct. 413;

Taylor v. Ypsilanti,

105 U. S. 60, 26 L. Ed. 1008;

Douglass v. Pike County,

101 U. S. 677, 25 L. Ed. 968;

Olcott v. Fond du Lac County,

16 Wall. (U.S.) 678, 21 L. Ed. 382;

Havermeyer v. Iowa County,

3 Wall. (U.S.) 294, 18 L. Ed. 38;

Gelpcke v. Dubuque,

1 Wall. (U.S.) 175, 17 L. Ed. 520;

Ohio Life Ins. & Trust Co. v. Debolt,

16 How. (U.S.) 416, 14 L. Ed. 997.

While this list of citations is by no means exhaustive of the instances in which the rule has been applied, the decisions cited are sufficiently illustrative for our present purpose.

In the case of **Anderson v. Santa Anna Township**, supra, Mr. Justice Harlan, who delivered the opinion, pointed out that it is not necessary that the prior decisions,

rendered before contract rights were acquired, be "analogous in every respect," to the case under consideration.

In the course of the opinion it is said:

"For it is the long-established doctrine of this court—from which, as said recently in **Green County v. Conness**, 109 U. S. 105, we are not disposed to swerve—that where the liability of a municipal corporation upon negotiable securities depends upon a local statute, the rights of the parties are to be determined according to the law as declared by the State courts at the time such securities were issued."

And in **Douglass v. County of Pike**, 101 U. S. 677, in an opinion by Mr. Chief Justice Waite, it is said:

"As a rule, we treat the construction which the highest court of a state has given a statute of the State as part of the statute, and govern ourselves accordingly; but where different constructions have been given to the same statute at different times, we have never felt ourselves bound to follow the latest decisions, if thereby contract rights which have accrued under earlier rulings will be injuriously affected."

"So far as this case is concerned, we have no hesitation in saying that the rights of the parties are to be determined according to the law as it was judicially construed to be when the bonds in question were put on the market as commercial paper."

It is elementary that the same rules apply to a state court's construction of provisions of the constitution of the particular state as are applicable to its construction of state statutes.

There is an illuminating discussion of this question in an article by Professor Orvill C. Snyder, of the Brooklyn Law School, St. Lawrence University, published in the

summer of 1940, in the *Illinois Law Review*, Volume 35, page 121, entitled "Retrospective Operation of Overruling Decisions."

Professor Snyder states, at page 130 of his article, that:

"In the cases, retrospective operation of overruling decisions is stated as the general rule but consistently with exceptions. The most discussed exception is the one, taking its rise from certain language in the case of *Ohio Life Insurance & Trust Co. v. Debolt*, which may be called the contract exception. It may briefly be stated to the effect that an overruling decision will not be given retrospective operation to affect contracts made or property rights acquired in reliance upon the decision overruled."

Although, at page 133, he states that the "contract exception" to the retrospective operation of overruling decisions was formerly thought to be based upon constitutional grounds, nevertheless, he demonstrates, at page 139, that the "contract exception" has survived the decisions holding that a change of decision is not the making of a law, in violation of the impairment guaranty of the Federal Constitution.

Professor Snyder discusses at some length the case of *Gelpcke v. Dubuque*, 1 Wall. (U.S.) 175, and the subsequent decisions of the State and Federal Courts following the *Gelpcke* case. He points out that the rule of the *Gelpcke* case, as stated in the opinion, "rests upon the plainest principles of justice." The particular principle referred to he designates as the "principle of reliance."

This "principle of reliance" is a principle of the common law, which is shown by Professor Snyder to ante-date the Federal Constitution. This is demonstrated, at page 146 of the article, by quotations and citations from *Blackstone's Commentaries*, *Kent's Commentaries*, the *Federalist Papers*, *Bracton*, and *Coke upon Littleton*.

The principle is that the law is a rule of conduct, that

is, a rule relating to the conduct of a person who is to obey the rule or suffer the sanctions of the law if he does not, and since the only rule anyone can obey is the rule which exists and which he can discover at the time he acts, ignorance of which he will not be allowed to plead as an excuse, therefore, a person has the right to be judged by the rule which, at the time he acts, he can discover and then obey if he will.

This "principle of reliance" forms the basis of the doctrine of **stare decisis**.

It is the same principle that is involved in the constitutional prohibition against *ex post facto* legislation and against legislation impairing the obligation of contracts. The "principle of reliance" is not the constitutional guaranties themselves, of course, but it is the principle underlying both of these guaranties.

It is a principle of the common law, which existed before the time of written constitutions.

In this connection, it should be noted that **Section 71, Revised General Statutes of Florida, 1920, (Section 87, Compiled General Laws of Florida, 1927)**, which has been in force since November 6, 1829, provides that:

"The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the fourth day of July, 1776, are hereby declared to be of force in this State: Provided, the said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this State."

Professor Snyder's article states, in footnote 217, on page 144, of **Volume 35, Illinois Law Review**, that the case of **Erie Railroad Company v. Tompkins**, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188, "probably requires the federal courts to follow the state rule on retrospection in all issues of state law where the state courts have held expressly either that an overruling decision relates backward or that it relates forward: * * *

"Although the federal contract exception has always been curiously involved with the general law doctrine of **Swift v. Tyson** * * * the overruling of **Swift v. Tyson** does not prevent the federal courts from following the exception where the state courts have not decided that retrospective operation shall be given to its overruling decision."

The article also points out that on December 4, 1939, Chief Justice Hughes, in a concurring opinion, with Justices McReynolds and Roberts, with relation to the retrospective effect of an overruling decision of the Supreme Court of Oklahoma, said:

"I think that we are not at liberty to assume that the Oklahoma court would so far depart from the plain requirements of justice. * * * The state court has not spoken to that effect."

Oklahoma Packing Co. v. Oklahoma Gas & Electric Co., 309 U. S. 4, 60 S. Ct. 215; (Text 219), decided in 1939.

Pertinent portions of Professor Snyder's article are printed in Appendix C to this brief.

Since the Supreme Court of Florida has expressly declared the "contract exception" or "principle of reliance" to be the law of Florida, (see **Columbia County v. King**, supra, **State ex rel. Nuveen v. Greer**, supra, **Humphreys v. State ex rel. Palm Beach Co.**, supra, **Alta Cliff Co. v. Spurway**, supra, and **Lee v. Bond-Howell Lumber Co.**, supra), it is insisted that the Federal courts are bound by the rule of the **Erie case** to apply the "contract exception" or "principle of reliance" and to follow the rule of **Sullivan v. City of Tampa** in determining the petitioners' rights under their refunding bond contract.

Second Question

Where a contract (refundng bond contract) provides that "if any of the bonds hereby authorized be adjudged illegal or unenforcible, in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to

be refunded and as such enforce their claim for payment," and where the decisions of the highest court of the state where the contract was made are in harmony with the validity of this provision, if the Federal courts should be of the opinion that the particular contract in question cannot be enforced in all respects as written, because of State Court decisions announced after the contract was made, but must therefore be adjudged "illegal or unenforceable, in whole or in part," should not the holders of the refunding bonds be held entitled to assume the position of holders of a like amount of the indebtedness refunded and as such to enforce their claim for payment?

This question might be more specifically stated as follows:

Where the basic resolution authorizing an issue of refunding bonds, to be exchanged for outstanding bonds of a municipality, provides that if any of the refunding bonds be adjudged illegal or unenforceable, in whole or in part, then the holders thereof shall be entitled to assume the position of holders of a like amount of the outstanding indebtedness to be refunded, and as such enforce their claim for payment, and a provision favorable to the bondholders is inserted in the refunding bonds, as a condition of and consideration for a new provision favorable to the municipality, and detrimental to the bondholders, if the provision of the refunding bond contract favorable to the bondholders be thereafter held illegal and unenforceable, are not the bondholders entitled to assume the position of original bondholders, as provided in their contract, rather than be bound by the new provision in the refunding bonds, favorable to the municipality, when they are unable to enforce the consideration for such new provision?

It has been pointed out that the original bonds of the City of Winter Haven were non-callable obligations (R. 3). They were payable on a definite maturity date, and could not be called for redemption prior to such maturity date.

These original non-callable bonds were surrendered by the holders in exchange for the callable 1933 refunding

bonds. The bonds were exchanged according to a definite schedule (R. 19, 21, 82).

Thus, it appears that the bonds held by the plaintiffs (petitioners) in the instant case include General Refunding Series "A" Bonds of the 1933 Issue, bearing various numbers from 721 through 1970, in the total amount of approximately \$183,000.00, maturing in the years 1949 through 1962 (R. 94, 95). These refunding bonds were exchanged for bonds maturing in the years 1934 to 1947, inclusive (R. 19, 21, 82).

It also appears that the plaintiffs (petitioners) hold 42 Series "A" Refunding Bonds, bearing various numbers from 2004 through 2204, maturing April 1, 1963 (R. 95), and that these bonds were issued in exchange for original bonds maturing in 1948 and subsequent years (R. 19, 21, 82).

It further appears that the plaintiffs (petitioners) hold Series "B" Refunding Bonds, bearing various numbers from 191 through 292, in the approximate amount of \$20,000.00 (R. 96), maturing in the years 1949 through 1961, which were issued in exchange for original bonds maturing in the years 1934 to 1947, inclusive (R. 82), and that the plaintiffs (petitioners) hold 13 bonds bearing various numbers from 311 through 334, maturing April 1, 1963 (R. 96), which were issued in exchange for original bonds maturing in 1948 and subsequent years (R. 19, 21, 82).

So, it is thus seen that the greater portion of the 1933 refunding bonds now held by the plaintiffs (petitioners) were issued by the City in exchange for original bonds which did not mature for several years after the refunding operation of 1933, and a large portion of which even yet, will not have matured for several years. Those original bonds constituted an indefeasible obligation to pay interest at the rates of $5\frac{1}{2}$ and 6 per cent until the maturity of the bonds. The holder of the original bond was under no duty to surrender his bond and appurtenant interest coupons except upon payment of the face amount of the bond and payment of all of the appurtenant interest

coupons thereto attached representing interest to become due to the maturity date of the bond. If the original bonds had not been surrendered in exchange for the 1933 refunding bonds, the holders of the original bonds would today be entitled to receive $5\frac{1}{2}$ and 6 per cent interest on the principal amount, until the ultimate maturity date of such original bonds, which in many cases will be several years in the future.

Since each original bond had a fixed maturity date, and was not subject to call or redemption prior to such maturity date, the city would today be able to retire such a bond only by paying to the holder the full principal amount, plus interest at the contract rate to the maturity date.

The 1933 refunding bonds, which were accepted by the holders of the original bonds in exchange for their old bonds, not only bore interest at a lower rate than the original bonds for the first several years, but contained a provision for call and redemption prior to maturity, which was not present in the original bonds. The holders of the original bonds, however, in accepting the new bonds, containing the call provision, did not entirely surrender their vested right to interest at the former contract rate, for the refunding bonds were made callable prior to maturity only upon payment of a stated proportion of the deferred interest, the full amount of which was otherwise postponed to the maturity of the refunding bonds.

It must be remembered that a callable bond is a less desirable investment than one which is non-callable.

Mr. A. M. Hillhouse, on page 367 of his book, "**Municipal Bonds.**" published in 1936, by Prentice-Hall, discusses the result to the bondholder of accepting a callable refunding bond in exchange for a non-callable original bond, as follows:

"In many refunding plans, the new bonds carry the optional feature, which makes possible an acceleration of debt retirement as financial conditions improve. Detroit has already exercised the

optional feature by calling some of its refunding bonds. In the case of Detroit and some other cities, this callable feature has worked an unexpected hardship on the bondholders. Wyandotte, Michigan, may be cited as an example. Early in the depression, and prior to the development of the very favorable municipal bond market, bondholders cooperated by accepting refunding bonds in exchange for their old holdings. A callable provision was inserted, whereas no such feature had appeared in the old bonds. When the low interest bond market developed, Wyandotte proceeded to exercise its option. New 2 per cent coupon bonds in the amount of \$526,000 were sold in the market for cash, and bondholders owning 4½'s, 4's and 5's were paid off. They were thus forced to reinvest their funds in a low interest market, being penalized thereby for their earlier willingness to cooperate with the city in a refunding agreement."

The Supreme Court of Florida, recognizing such experiences, held in *State v. Sarasota County*, 118 Fla. 629, 159 So. 797, that the undertaking to pay deferred interest was a legal provision, which the taker of a refunding bond might legitimately accept as partial compensation for his relinquishment of a non-callable bond in exchange for a callable one, especially where, as here, the burden of indebtedness was not increased, but was decreased by enabling the City to retire the bonds for less than the full amount of the deferred interest, which under the original bond it would have been absolutely obligated to pay in any event.

It was argued in the District Court that the provision which allows the City to call its bonds prior to maturity, thus taking advantage of a "cheap money market," is severable and distinct from that portion of the call provision which specifies that the bonds shall be callable only upon payment of the stated portion of the deferred interest, and that therefore the City is entitled to call the

bonds by paying principal, plus accrued interest, at the low currently maturing rate provided in the bonds, without complying with that portion of the bond contract which requires the City to pay a portion of the deferred interest, as a prerequisite to effecting a call of the bonds.

In other words, the City wants to "eat its cake and have it too."

However, the refunding bond contract protects the bondholders against this very contingency, for Section 20 of the resolution authorizing the 1933 bonds, provided that:

"If any of the bonds hereby authorized be adjudged illegal or unenforceable, in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment." (R. 83)

Thus, the takers of the 1933 refunding bonds foresaw the possibility of just such a situation as has now arisen, and the City and its bondholders expressly provided, in the contract, that in such event, the holders of the original bonds, having exchanged their original holdings for the 1933 refunding bonds and cooperated with the City in adjusting its financial affairs, would not be penalized, in the event a portion of the new refunding bond contract should be held invalid, and be forced to accept a contract with one or more features eliminated therefrom, which might very well, as in the instant case, result in a situation which the original bondholders would never have entered into willingly, but would have the option, in such a contingency, to revert to their rights under the original bond contract.

There was nothing unfair or illegal about such a provision. On the contrary, it is extremely unfair to hold, as the District Court has held, that the bondholder, having been induced to surrender his original contract in exchange for a new contract, a vital portion of which has now been whittled away by court construction, must be

bound by that portion of the new contract which survives the decision of the court, and which wholly favors the City, and thus be placed in the position of having accepted a contract which he did not make, and would not have made, and could not have been forced to accept, although at the time of surrendering his original bond, it was expressly stipulated between the bondholder and the City that, unless he chose to do so, the bondholder could not be forced to accept less than the entire new contract, in the event any portion of it proved illegal or unenforceable.

The respondents in the District Court relied upon the ruling of the Florida Supreme Court in the **Andrews case** that the call provision of the 1933 refunding bonds, could be separated from the deferred interest provision, which forms an integral portion of the call feature, from which the State Court concluded that the City was entitled to call the bonds, but did not have to pay any portion of the deferred interest in order to effect a legal call.

The amendment to the complaint, however, shows that in the **Andrews case** the State Court did not have before it that provision of Section 20 of the authorizing resolution which allows the refunding bond takers to assume the position of holders of a like amount of the original indebtedness in the event any portion of the refunding bond contract should be held illegal (R. 107).

In fact, the amendment shows that no part of the resolution authorizing the 1933 refunding bonds was brought to the attention of the court in the **Andrews case**, either by the pleadings or by the briefs, and that the bond contract was not fully submitted to the Circuit Court of Polk County or to the Supreme Court of Florida (R. 102).

The only portion of the refunding bond contract pleaded in the **Andrews case** was a copy of one of the bonds (R. 142), and a copy of one of the deferred interest coupons (R. 111).

Instead of submitting a copy of the resolution authorizing the 1933 refunding bonds, the plaintiff in the **Andrews case** submitted a copy of a preliminary agreement between the City of Winter Haven and certain creditors who

agreed to set up a refunding agency, which agreement formed no part of the City's contract with its bondholders (R. 119).

There was, therefore, no ruling whatever by the State Court on the right of a holder of the refunding bonds to assume the position of a holder of the original bonds.

Admittedly, the law to be applied by the Federal courts is the State law of Florida, but the Florida cases uphold the plaintiffs' (petitioners') position.

In **Jefferson County v. Hawkins, Trustee**, 23 Fla. 223, 2 So. 362, the Supreme Court of Florida considered a case where the County had issued certain bonds, referred to for convenience as "blue bonds." Later, the County without legislative authorization, issued refunding bonds, in lieu of the "blue bonds," for the principal of the bonds and for the matured interest. The new or refunding bonds were referred to as "white bonds." The Court held that the "white bonds" were void, but that when the County took up the "blue bonds" with the "white bonds," that did not extinguish the debt, but the debt remained until paid. It was further held that the County was obligated to pay interest on the principal of the "blue bonds" at the contract rate, and to pay interest on the matured "blue bond" interest coupons, from their maturity, at the legal rate of interest.

In the case of **State ex rel Gillespie v. Walthal**, 124 Fla. 866, 169 So. 552, decided July 21, 1936, the Florida Supreme Court, speaking of the identical issue of Winter Haven 1933 refunding bonds involved in the instant case, emphasized the fact that, on the strength of the validation decree, ~~procured by the City~~, the original bonds had been exchanged for the refunding bonds and surrendered to the City, and the Supreme Court of Florida held that the refunding bonds "therefore were, at least valid extensions pro tanto of the original obligations."

Neither of these cases has ever been overruled.

The Supreme Court of Florida, following the adoption in 1934 of an amendment to the Florida Constitution exempting homesteads from taxation, has rendered numer-

ous decisions holding that one who accepts a refunding bond issued after the adoption of the amendment, in lieu of an original bond issued prior to the amendment, has the same rights relative to the taxation of homesteads that the holders of the bonds refunded had.

These Florida cases are in line with the general rule on the subject:

"If the holder of valid bonds surrenders them and receives other bonds which the municipality had no authority to issue, recovery may be had on the old bonds as if the new ones had not been issued." (Citing authorities).

5. McQuillan on Municipal Corporations, 4930, Section 2349, Note 96.

"Where the holder of valid bonds surrenders them to the municipality and receives in exchange therefor other bonds which the municipality had not the lawful right to issue, he is not divested of his title to the bonds surrendered and may maintain an action on them after they mature." (Citing authorities).

44 Corpus Juris 1239, Section 4227.

In such a case, "the plaintiff, by his act of surrender or exchange, did not alienate his title to the original bonds, notwithstanding they are not under his absolute control," or in his "actual possession."

Deyo v. Otoe County, 37 Fed. 246.

In City of Plattsmouth v. Fitzgerald, 10 Neb. 401, 6 N.W. 470, it was held that the fact that an issue of refunding bonds was void, because issued in excess of the limits fixed by law, did not deprive the holder of the right to enforce the obligation of the bonds surrendered in exchange for the refunding bonds, the Court holding that, the debt being still unpaid, and being valid in its inception, and a just debt against the municipality, the City was liable thereon.

The surrender of a negotiable instrument, upon the issuance of a renewal obligation, does not operate to extinguish the debt or to prevent the creditor from recovering upon the original obligation.

Bass v. Inhabitants of Wellesley,
192 Mass. 526, 78 N. E. 543.

If the surrender of an outstanding obligation in exchange for a new obligation that is **void**, in its entirety, does not discharge the original obligation, it necessarily follows that the exchange of an outstanding obligation for a new obligation that is void or unenforcible, in part only, does not discharge the original obligation.

Accordingly, the complaint prayed for relief in the alternative (R. 24, 25), as permitted by **Rule 8, Paragraph (a) Subdivision (3), Federal Rules of Civil Procedure.**

That is to say, the plaintiffs (petitioners) sought to have the call provision of the 1933 refunding bonds declared inoperative, unless fully complied with, by posting the prescribed portion of the deferred interest, but in the event that the Court should refuse such relief on the ground that the deferred interest provision was unenforcible, then the plaintiffs (petitioners), in accordance with the saving clause of the refunding bond contract, asked to be accorded the right to assume the position of holders of the original bonds and declared to be entitled to collect interest at the rate provided for in such original bonds, which were surrendered in exchange for the 1933 refunding bonds now held by the plaintiffs (petitioners), less the amount of interest already paid on such 1933 refunding bonds.

In view of the foregoing decisions and authorities, it seems clear that the District Court committed error, upon refusing the primary relief so sought, in denying the remedy specifically provided in the bond contract for just such a situation.

Third Question

In a case where the Federal jurisdiction has been invoked, by citizens of another state, who have shown that

the jurisdictional amount is involved, and where there is an actual controversy presenting justiciable issues requiring determination and entitling plaintiffs (petitioners) to a declaratory judgment and an injunction in support of such declaration, and where the parties to the controversy have litigated the matter both in the District Court and in the Circuit Court of Appeals, without objection or protest, should not the Federal courts decide the controversy, in the light of the State Court decisions bearing upon the contract rights of the litigants, rather than to remit the plaintiffs (petitioners) to their remedy in the State courts, it being a fact that the case presented involves no invasion of high state functions or policies, but only the question of how much a public corporation debtor owes the plaintiffs (petitioners) under its contract with them?

It is insisted that the Circuit Court of Appeals overlooked the fact that the fundamental matter involved in this case is the contract rights of the plaintiffs (petitioners), that the case does not involve a question of what the local public policy is or should be, that no invasion of state functions is contemplated or in prospect, and that the decisions cited in the majority opinion of the Circuit Court in support of its action in remitting the plaintiffs (petitioners) to their remedy in the State courts do not justify such a course. They are essentially different from this case, in the following respects:

In **Cavanaugh v. Looney, Attorney General, et al.**, 248 U. S. 453, 39 S. Ct. 142, certain citizens of a state applied to the Federal Court to enjoin a high official of the State from suing in the State Court to condemn private property for public use, under an applicable statute. It was pointed out that no such injunction "ought to be granted unless in a case reasonably free from doubt" and when necessary to prevent great and irreparable injury, that the jurisdiction should be exercised only where intervention is essential in order effectually to protect property rights against injuries otherwise irreparable, that when considered in connection with established rules of law relating to the power of eminent

domain complainants' allegation of threatened "irreparable loss and damage" appeared fanciful, that the detailed circumstances negatived such view and rather tended to support the contrary one, that nothing indicated that any objections to the validity of the statute could not be presented in an orderly way before the state court where defendants intended to institute condemnation proceedings, and that if by any chance the state courts should finally deny a federal right the appropriate and adequate remedy by review was obvious. It was held that, exercising a wise discretion, the court below had properly denied an injunction.

In **Gilcrist v. Interborough Rapid Transit Co.**, 279 U. S. 159, 49 S. Ct. 282, a New York corporation applied to the Transit Commission of the State of New York for increased rates, and when its application had been denied, it then applied to the Federal Court to enjoin the Transit Commission from taking or prosecuting proceedings in the State Court to test and enforce the old rates, in the face of the fact that, under applicable statutes under which the corporations franchises were granted, the corporation could not have resorted to a Federal Court without first applying to the Transit Commission. The Supreme Court, although reversing an interlocutory injunction order of a District Court of three judges, remanded the cause for further proceedings.

In **Di Giovanni v. Camden Insurance Association**, 296 U. S. 64, 56 S. Ct. 1, an insurance company applied to a Federal Court to cancel two insurance policies (neither of which exceeded \$3,000.00 in amount), which policies were alleged to have been fraudulently obtained. The plaintiff sought to invoke the equitable jurisdiction of the Federal Court by the expedient of charging a conspiracy between the beneficiaries, who were husband and wife, and of asserting that the avoidance of a multiplicity of suits was sought. The Court held that the threatened injury to the respondent insurance company was of too slight moment to justify a federal court of equity, in the exercise of its discretion, in according a remedy which

would entail denial of a jury trial to the petitioners and withdraw from the jurisdiction of the state courts suits which could not otherwise be brought into the federal courts. The opinion points out (a) that the beneficiaries of the policies had filed proofs of loss and were about to begin suits at law against the respondent to recover the full amounts of the policies, (b) that no suit at law could be maintained upon the policies in the federal courts since neither exceeded \$3,000.00, (c) that jurisdiction cannot ordinarily be conferred on a federal court by joining in a single suit separate causes of action in none of which more than \$3,000.00 is involved, (d) that there was no showing that the defenses to the policies could not be set up and litigated as readily in a suit at law as in equity, (e) that want of the jurisdictional amount in controversy which deprives a federal court of its authority to act at law is not ground for invoking its equity powers, (f) that the remedy which respondent sought depended upon the slender thread of its right to ask a federal court of equity to save it the possible inconvenience of trying two lawsuits instead of one, (g) that the grounds for relief to a single plaintiff which will deprive two or more defendants of their right to a jury trial must be real and substantial and its necessity must affirmatively appear, and finally, (h) that this tenuous ground for the exercise of equity powers was put forward as the sole medium by which suits might be withdrawn from the jurisdiction of the state courts which could not be removed to or otherwise brought into the federal courts.

In **Railroad Commission v. Pullman Co.**, 312 U. S. 496, 61 S. Ct. 643, racial discrimination in violation of the Constitution was charged. However, the opinion stated that the case "touches a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open," and that adjudication of the constitutional issue could be avoided if a definitive ruling on the state issue presented would terminate the controversy. It was also observed that there was no adjudication of the state issue by the Texas courts.

and that, "no matter how seasoned the judgment of the district court may be, it cannot escape being a forecast rather than a determination." The holding was not that the jurisdiction of the federal courts should not be exercised, but that the cause should be remanded to the district court, with directions to retain the bill pending a determination of proceedings, to be brought with reasonable promptness in the state court, in conformity with the opinion.

In **Morin v. City of Stuart**, 111 Fed. (2nd) 773, the Court recognized that the appropriate, if not indeed the exclusive remedy, for ousting a municipality chartered by a state from jurisdiction allegedly usurped by the municipality is a proceeding in quo warranto, such having been always reeognized as a function reserved to the states themselves, through the action of the Attorney General of the State.

In **United States ex rel. Horigan v. Heyward, Mayor, et al.**, 98 Fed. (2nd) 433, it was held that an inquiry into the very existence of a municipality chartered by a state is in general reserved to the state itself in a direct proceeding by quo warranto.

It is insisted that Judge Sibley was right when he said (R. 198):

"There being a presently acute justiciable controversy, I think we are bound to declare the rights of the parties, though the grant of injunction is discretionary. The Constitution extends the judicial power of the United States to controversies between citizens of different States arising under the laws of a State, just as fully as to controversies arising under the Constitution and laws of the United States. There is the same power and the same duty to decide both classes of cases. This case involves no invasion of high State functions or policies as to which caution is due, but only a question of how much this City owes these bondholders on calling their bonds for payment before

due. Such questions have been decided by federal courts from the beginning."

Respectfully submitted,

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APPENDIX A

Chapter 11855—(No. 50)

AN ACT to Authorize the Issuance of Refunding Bonds by Counties, Cities, Towns and Other Municipal Corporations and Taxing Districts, and to Provide for Their Payment.

Be it Enacted by the Legislature of the State of Florida:

Section 1. That the governing authority of any county, city, town, municipal corporation or taxing district of the State may by resolution, authorize the issuance of refunding bonds for the purpose of refunding any bond, note, certificate of indebtedness or other obligation for the payment of which the credit of said county, city, town, municipal corporation or taxing district is pledged, at or prior to maturity in the manner provided in this Act.

Sec. 2. Said refunding bonds may be issued within three months prior to the date of maturity of the obligations proposed to be refunded, or if said outstanding obligations shall be callable, within three months prior to the callable date. Refunding bonds may be delivered under the provisions of this Act at any time regardless of the date of maturity or optional dates of the obligations refunded, upon the surrender by the holder of a like amount of the obligations refunded. All obligations refunded under the provisions of this Act shall be immediately canceled in such manner as the governing authority shall prescribe.

Sec. 3. Said refunding bonds may be in coupon or registered form, or may be coupon bonds with privilege of registration as to principal only or as to both principal and interest, under such terms and conditions as the governing authority may prescribe. The governing authority may designate a bank or trust company within the State of Florida to act as registrar for said bonds. All bonds issued

hereunder shall mature in annual instalments of not less than three per cent of the total amount thereof, beginning not more than three years after date and running not longer than twenty-five years after date. They shall bear interest at a rate not exceeding six per centum per annum, payable annually or semi-annually, and shall be executed in such a manner as the governing authority shall determine. Said bonds may be sold at public or private sale, and said bonds shall not be sold for less than ninety-five per centum of their par value and accrued interest to date of delivery.

Sec. 4. All special assessments levied on account of any improvement to finance which the obligations so refunded were issued, upon collection shall be paid into the sinking fund for the payment of the refunding bonds, and the proceeds of said special assessments shall be used for no other purpose. For the payment of all bonds issued under the provisions of this Act, the full faith and credit of the county, city, town, municipal corporation or taxing district, shall be pledged, and there shall be levied annually upon all taxable property therein, a tax sufficient to provide for the payment of said bonds and the interest thereon at maturity. All bonds issued hereunder for the purpose of refunding obligations which are excepted from any limitations of indebtedness, shall likewise be excluded in applying any limitation of indebtedness prescribed by any statute of the State or City or Town Charter.

Sec. 5 In the event refunding bonds are issued under the provision of this Act prior to the date of maturity or option date, of the obligations proposed to be refunded, the proceeds of said refunding bonds shall be deposited in a bank or trust company within the State of Florida, which depository shall give a surety bond, or other such bonds as are authorized by law to be accepted for securing County and City funds, satisfactory to the Comptroller of the State of Florida for the full amount of money so deposited, and the funds so deposited shall only be withdrawn with the approval of the State Comptroller, for the purpose

of paying the obligations to refund which said bonds were issued.

Sec. 6. No proceedings shall be required for the issuance of bonds hereunder, except such as are prescribed by this Act, any provisions of the general laws of the State of Florida or of any special act or municipal charter applicable to the political subdivision issuing said bonds, to the contrary notwithstanding.

Sec. 7. This Act shall take effect upon its approval by the Governor, or upon its becoming a law without such approval.

Approved June 6, 1927.

APPENDIX B
Chapter 15772—(No. 54)
(Title Omitted)

Be it Enacted by the Legislature of the State of Florida:

Section 1. This Act may be cited as the General Refunding Act of 1931.

Section 2. Each county, city, town, special road and bridge district, special tax school district, and other taxing districts in this State, herein sometimes called a unit, is hereby authorized to issue, pursuant to a resolution or resolutions of the governing body thereof (meaning thereby the board or body vested with the power of determining the amount of tax levies required for taxing the taxable property of such unit for the purpose of such unit) and either with or without the approval of such bonds at an election, except as may be required by the Constitution of the State, bonds of such unit for the purpose of refunding any or all bonds, coupons or interest on any such bonds, or coupons or paving certificates of indebtedness, or interest on any such paving certificates of indebtedness, now or hereafter outstanding, or any other funded debt, all of which are herein referred to as bonds, whether such unit created such indebtedness or has assumed, or may become liable therefor, and whether indebtedness to be refunded has matured or to thereafter become matured.

Section 3. Such resolution or resolutions shall determine the rate or rates of interest to be paid, not exceeding six per centum per annum, payable annually or at shorter intervals, and the maturity or maturities of the bonds which shall be at a time or times not exceeding sixty years from the date of the bonds, (except that in the issuance of bonds of taxing districts where the maturities are fixed under the Constitution, then such maturities shall be in accordance with the maturities fixed in the constitutional provision), as well as determine the medium of payment

and the place or places in Florida or any other state at which the principal and interest shall be payable. In the discretion of the governing body the right to redeem all or any of the bonds at par before maturity may be reserved upon terms and conditions to be fixed by resolution.

Section 4. Any such unit may obligate itself to redeem any or all of the refunding bonds before maturity on such terms and conditions as the resolution authorizing such bonds may determine. Bonds subject to redemption shall state the manner of giving notice of intention to redeem (which may be by publication without actual notice), and when such notice has been given such bonds shall not bear interest after the date fixed in such notice of redemption, nor shall coupons maturing thereafter be valid, provided that adequate funds for their redemption shall have been provided and set aside by such unit.

* * *

Section 6. One resolution may provide for several separate series of refunding bonds. Each of such series and separate bonds of the same series may have different terms and provisions from the others. The same bonds may bear different rates of interest at different times. Bonds issued for the purpose of refunding accrued interest may be non-interest bearing or may bear a lower rate than other bonds of the same series as may be provided in the resolution.

Section 7. Such resolution may provide that all or any part of the bonds issued thereunder shall mature in annual installments beginning at such time after date and running not longer than sixty years after date as said resolution may provide.

Section 8. Bonds issued under this Act may be exchanged for not less than an equal principal amount and/or accrued interest of indebtedness to be retired thereby, including indebtedness not yet due, if the same be then redeemable or if the holders thereof be willing to surrender the same for retirement, but otherwise shall be sold and the proceeds thereof shall be applied to the

payment of such indebtedness and/or accrued interest due or redeemable which may be so surrendered.

* * *

Section 10. No bonds shall be sold under this Act at less than ninety-five per cent of par, with accrued interest to date of delivery thereof.

* * *

Section 14. As hereinbefore provided the refunding bonds instead of being sold may be exchanged for bonds or for interest on bonds or interest on overdue interest on bonds to refund which they are issued. The principal and accrued interest of the refunding bonds shall not exceed the amount of the obligations refunded.

Section 15. If the refunding bonds bear a lower rate of interest than the bonds for which they are exchanged, either the resolution authorizing the bonds or the refunding bonds themselves may provide that the refunding bonds shall bear the lower rate of interest only so long as the unit shall not be in default of any agreement or obligations to the holders and that after any such default, or at the option of the holders after any such default the refunding bonds shall bear the same rate of interest as the bonds for which they were exchanged. The unit may impose limitations on the right to exercise such option, and may provide that the option may only be exercised after a period of default, or by the holders of a certain amount or proportion of bonds, all as provided in the said resolution or in the refunding bonds, and if the right to the higher interest accrues may agree to substitute new bonds and coupons bearing such higher interest.

Section 16. The resolution authorizing the refunding bonds may contain an agreement on the part of the unit to provide a sinking fund for such bonds, and said resolution may provide for payments of such sinking fund, the investment thereof, the administration thereof, and the application thereof to the payment, purchase and redemption of the refunding bonds.

* * *

Section 24. Any election which may be held to determine whether any such refunding bonds shall be issued, if required by the Constitution of the State, shall be called, noticed and conducted, and the result thereof determined and declared as shall have been or may be required by law for the issuance of any bonds of the unit proposing to issue the bonds herein authorized: but if an election be not required by the Constitution and nevertheless be held, it may be called, noticed and conducted, and the result thereof determined and declared, in such manner as the governing body may provide by resolution. It shall not be necessary to hold any election for the issuance of any refunding bond, except in those cases in which an election is required by the Constitution of the State of Florida.

* * *

Section 27. This Act constitutes full authority for the things herein authorized, and no proceedings, publications, notices, consents or approval shall be required for the doing of the things herein authorized except as are herein prescribed and required. This law shall be deemed complete within itself except insofar as other laws are specifically made applicable, nor shall powers hereby granted be restricted or limited by any other law.

Section 28. The several clauses and parts of this Act are mutually independent of each other, and if any part of this Act should be declared unconstitutional or void or invalid no other part of this Act shall be affected thereby.

* * *

Section 30. Refunding bonds provided to be issued under this Act shall be subject to validation and judicial proceedings in like manner and with like force and effect as bonds generally are provided to be validated by judicial proceedings under the laws of this State.

* * *

Section 33. No proceedings shall be required to be taken as to the issuance of any refunding bonds under this Act, except those prescribed by this Act, any provisions of

any other law, general or special, to the contrary notwithstanding.

Section 36. That this Act shall become effective immediately upon its passage and approval by the Governor, or upon its becoming a law without his approval.

Approved July 29, 1931.

APPENDIX C

EXCERPTS FROM THE ARTICLE ENTITLED

"RETROSPECTIVE OPERATION OF OVERRULING DECISIONS"

35 Illinois Law Review 121

EXCEPTIONS TO RETROSPECTIVE OPERATION

In the cases, retrospective operation of overruling decisions is stated as the general rule but consistently with exceptions. The most discussed exception is the one, taking its rise from certain language in the case of **Ohio Life Insurance & Trust Co. v. Debolt**, which may be called the contract exception. It may briefly be stated to the effect that an overruling decision will not be given retrospective operation to affect contracts made or property rights acquired in reliance upon the decision overruled. Much ink has flowed in efforts to restrict the rule against retrospection to this exception, in attempts to narrow the exception itself, and in explanations of its basis.

It has been declared that the only exception pertains solely to contracts and property rights acquired by contract. However, a personal-rights exception has appeared in criminal prosecutions; and puzzling, perhaps peculiarly instructive, is the fact that when this happened the contract exception was introduced into the reasoning with the personal-rights exception later being cited to support the contract exception. It has been sought to narrow the contract exception to cases in which decisions construing statutes are overruled but the exception had been announced in the field of constitutional construction and has emerged in the field of pure case law. It has been essayed to confine the contract exception to cases of actual reliance on the overruled decision—with the result

of raising a presumption of reliance.¹¹¹ It has been suggested that the contract exception is one of the federal courts not recognized by state courts; that it is followed by the federal courts only in cases originating in these courts but not by the Supreme Court in cases coming to it from state courts of last resort; and that when followed by the federal courts it is followed only in cases involving questions of state law. Yet the exception has spread widely among state courts and there with extended scope. Even in the federal courts the original dictum was uttered in a case in which the Supreme Court was reviewing the decision of a state supreme court;¹¹⁵ and it cannot be overlooked that another case, often cited as an exception to the retrospective operation of overruling decisions although this seems clearly an erroneous view of the case, was decided by the Supreme Court in reversing the Court of Appeals of New York. Moreover, when considering the validity of a federal statute in an action originating in a federal court—a question of federal law in a federal court, the Supreme Court has said that “an all inclusive statement of a principle of absolute retroactive invalidity cannot be justified.”¹¹⁷ i.e., that relation backward of a

¹¹¹ (In footnote 111, the author demonstrates that “the prevailing rule is that this reliance need not be affirmatively shown, but will be implied from the attendant circumstances of the case,” and that “reliance will be presumed until it is affirmatively proved that there was no reliance.”)

¹¹⁵ *Ohio Life Insurance Co. v. Debolt*, *supra* note 102.

¹¹⁷ *Chicot County Drainage District v. Baxter State Bank*, 60 S. Ct. 317, 319 (1940). In this case an action was brought on some bonds in a United States district court. The defendant set up an earlier decree of the same court cancelling the bonds and enjoining their enforcement. The decree was held invalid by the lower courts “because, subsequent to its entry, this Court in a proceeding relating to a municipal district in Texas had declared the statute under which the District Court had acted to be unconstitutional.” The Supreme Court said: “The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree.” Citing *Norton v. Shelby County*, 118 U.S. 425, 442 (1886), and *Chicago, Indianapolis & Louisville Ry. Co. v. Hackett*, 228 U.S. 559, 566 (1913). The Court continued: “It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence

decision holding a federal statute invalid may be limited. If so, why not the retrospective operation of a decision overruling a previous decision? All in all, trying to reduce the rule against retrospective operation to a little, narrow exception seems somewhat signally marked with insuccess. The rule is hard to confine.

BASIS OF THE CONTRACT EXCEPTION

In the beginning it was thought that the contract exception should be based upon constitutional grounds, as the following widely quoted passage from **Douglass v. Pike County** witnesses: "The true rule is to give the change in judicial construction in respect to a statute the same effect in its operation on contracts and existing contract rights that would be given to a legislative amendment; that is to say, make it prospective, but not retrospective. After a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of decision is to all intents and purposes the same in its effect on contracts as an amendment of the law by means of a legislative enactment * * *. We cannot give then a retroactive effect without impairing the obligation of contracts long before entered into." The import of this seems to be that the judicial act of construing a statute is **making** law as much as the enactment of a statute by a legislature, and, hence, is **passing** a law within the meaning of the constitutional guaranty of the obligation of contracts.

of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects—with respect to particular relations, individual and corporate, and particular conduct, private and official." Can it not also be said that the actual existence of a decision is an operative fact which must be considered when the decision is declared to be invalid by overruling? The overruled decision cannot totally be erased by a new judicial declaration. While the overruled decision truly never was law, the unconstitutional statute also truly never was law.

If we are to judge by the citations in practically every case giving it, Mr. Chief Justice Taney originated this theory in 1853 in the case of **Ohio Life Insurance Co. v. Debolt**, which, as was asserted, involved a change of construction of the constitution of Ohio. A charter containing tax exemptions had been granted in 1845. For half a century it had been considered that the constitution of the state did not prohibit tax exemptions in charters, and it was contended that the Ohio court upheld legislation of 1851 by changing its construction of the constitution thereby impairing the charter contract. The Chief Justice indicated that such a change could constitute an impairment of a contract. In so saying, he relied upon **Rowan v. Runnels**, decided in 1847. In this case, originating in the federal courts upon notes given for the sale of slaves, the Supreme Court followed a construction of the constitution of Mississippi made by it before the notes were given rather than a construction made by the courts of Mississippi after the notes were given. The **Debolt** idea was referred to in 1863 in **Gelpcke v. Dubuque** and in 1879 in **Douglass v. Pike County**, both of which presented a change of decision by the supreme court of a state on the constitutional validity, under the state constitution, of state legislation. These are the sources of the contract exception. Since each case involved the meaning of a constitution, the theory announced in them considered as a theory of making law, is a theory of making constitutional law. Hence, the theory originated as one of constitutional construction rather than of statutory construction. However, many state courts extended the theory to the field of statutory construction.

COLLAPSE OF A CONSTITUTIONAL BASIS

But the theory has not provided a constitutional basis for the contract exception. In the field of statutory construction, the Supreme Court has repeatedly held that a change of decision by a state court as to the "meaning and scope" of a state statute is not making a law in violation of the impairment guaranty. In the field of constitu-

tional construction, the Supreme Court had deserted the theory even before **Douglass v. Pike County** was decided; for in **Railroad Co. v. McClure**, the court had held that, although a state constitution is a law within the meaning of the impairment guaranty, a change in judicial construction of a constitution does not violate that guaranty—a view frequently reiterated. While several state courts adopted the making-law-impairing-contracts view in the field of statutory construction and some in the field of constitutional construction, others rejected it outright; and those accepting the theory did so after **Railroad Co. v. McClure** so that their views constituted a misapprehension even at the time of announcement.

* * *

But there is no reason to believe the contract exception disappears with constitutional theories about it. The first definitive announcement of the exception was in 1863 in **Gelpcke v. Dubuque**; for **Ohio Life Insurance & Trust Co. v. Debolt**, decided in 1852, and **Rowan v. Runnels**, decided in 1847, were but dicta. The **Dubuque case** did suggest the impairment guaranty as the basis of the exception to retrospective operation of the overruling decision. However, in 1870, in **Railroad Co. v. McClure**, the Court expressly held, in a case coming up from a state court, that such a change of decision does not violate the impairment guaranty, taking a position since maintained. The rule of the **Dubuque case** survived the rejection of the impairment guaranty; for it was followed after 1870. Even after the impairment guaranty had again been squarely rejected, in 1895, the Court, in 1900, announced that it would follow the **Dubuque case** in cases coming up from the lower federal courts, although in 1899, the Court had held that it would follow the **McClure case** in cases coming up from the state courts. The other of the four sources of the contract exception, **Douglass v. Pike County**, decided in 1879 and containing the widely quoted passage stating the making-law-impairing-contracts theory, followed the same rule as the **Dubuque case**, although it did not overrule the **McClure case** which was followed after 1879.

Moreover, after the Court had in 1895 rejected the argument for the guaranty of due process of law as a basis of the contract exception, it reaffirmed the positions taken in both the **Dubuque case** and the **McClure case**; and, after having the due-process contention again urged upon it in 1905, the Court, in 1924, again expressed an approving view of the rule of the **Dubuque case** but said that case, if it had come up from a state court would have involved "no federal question." Consequently, while the Supreme Court has never followed the contract exception on any ground in cases coming up from state courts, the exception ¹⁷⁹ in the "independent jurisdiction" exercised in cases coming up from the lower federal courts still survives, notwithstanding that any imagined constitutional basis for it has totally disappeared or has not been discovered.

REAL BASIS OF THE EXCEPTIONS

In *Gelpcke v. Dubuque*, the positive statement is made that the exception "rests upon the plainest principles of justice." Nine years later in *Olcott v. Supervisors*, the Court repeated that "such a rule is based upon the highest principles of justice." Sixty-one years later, the Court said that the exception had been adhered to in cases coming up from the lower federal courts "where gross injustice would otherwise be done." In commenting on the federal rule, five years after its announcement, the Supreme Court of Iowa said that "the opinion professes to be planted, in its own language, upon 'truth, justice, and law.'" In 1906, the same court denominated the exception as "a sort of equitable doctrine." The Supreme Court of Kansas has called it "only a rule of policy." The Supreme Court of North Carolina has referred to it as a

¹⁷⁹ The cases seem to deal only with changes of decision as to the constitutional validity of statutes. However, since the Supreme Court has always treated cases of constitutional construction and statutory construction coming up from state courts exactly the same (*Railroad Co. v. McClure*, supra note 166, and *Central Land Co. v. Laidley*, supra note 169), there is no reason to believe that it would not treat them the same in cases coming up from the lower federal courts.

rule "based upon the highest principles of justice;" and the Supreme Court of Appeals of West Virginia has declared that "it is difficult to sustain this exception on principle. * * * It is plainly an exception made by the courts at the call of justice." This view—that the "principles of justice" constitute the basis of the federal contract exception—conforms to the fact that the Supreme Court has developed the exception only in its "independent jurisdiction" and has never announced any constitutional basis for it which it has not expressly repudiated.

The contract exception in the state courts has been, it is true, frequently planted on the making-law-impairing-contracts passage from **Douglass v. Pike County**. However, in statutory construction cases, other grounds have been announced. The Supreme Court of Alabama, along with the making-law-impairing-contracts reason, declared, in **Farrior v. New England Mortgages Security Co.**, that retrospection of overruling decisions "must be radically wrong. Such principle or rule of law would clog business transactions, unsettle titles, and destroy all confidence in the decisions of the supreme court of the state." The Supreme Court of Montana, without assignment of other grounds, said: "It would be manifestly unjust and improper to deprive the shipper of his legal right * * * simply because of the later opinion expressed by this court repudiating its former decision." The Supreme Court of North Carolina in **Hill v. Atlantic & North Carolina Railroad Co.**, set alongside the impairment guaranty another reason in the following words: "This court in **State v. Bell**, gave practical effect to the rule that the reversal of a precedent should not be allowed to work an injustice. * * * Was that not the only fair and proper course to pursue, and would other have commended itself to our sense of right? The opposite rule would have met strong condemnation, as being contrary to the plainest principles of justice." And that court did more. It linked the contract exception with the personal-rights exception of the criminal case of **State v. Bell**, in which the court had reasoned: "While it is true no man has a vested right

in a decision of the court, it is equally well settled that where, in the construction of a contract or in declaring the law respecting its validity, the court thereafter reverses its decision, contractual rights as acquired by virtue of the law as declared in the first opinion will not be disturbed. We have diligently searched for authority by which courts have been governed in cases such as the one before us. We find nothing very satisfactory. * * * We have deemed it but just to the defendants and not at variance with any authority in this court, to order a new trial. * * * If the defendants shall be able to establish their defense in accordance with the ruling in **Neal's** case, they are entitled to do so; but the construction now put upon the statute will be applied to all future cases." If the contract exception and the personal-rights exception applied in criminal prosecutions are related, that relation, since no constitutional ground is given in the criminal case, must be that the two exceptions rest upon the common ground of the "plainest principles of justice." While both **Hill v. Atlantic & North Carolina Railroad Co.** and **State v. Bell** are cases involving changed constructions of statutes, the North Carolina court has, relying upon them, extended the contract exception to cases overruling common law precedents. In **Hill v. Brown**, that court, in addition to the impairment guaranty, gave the following reason:

"We deduce the well-settled principle from a number of authorities that the law of contract enters into the contract itself, and, in the construction, forms a part of it. It is practically a dormant stipulation in the contract, and it must be enforced as a part of it, and as it is construed at the time the contract is made." But the court did not stop there; it went on to say that the principle it was applying had been fully recognized in **Hill v. Atlantic & North Carolina Railroad Co.**, quoting therefrom what was quoted in that case from **State v. Bell**. By this line of reasoning the court unshackled the contract exception and grounded it, both in cases overruling statutory constructions and in cases overruling common law precedents.

on the same "principles of justice" which are to be observed also in criminal cases. In denying retrospection of a decision overruling an equity precedent, the Supreme Court of Alabama stated that it did so "that no injustice may be done." Consequently, the contract exception in some state courts too has been rested on "principles of justice" as a sole ground or as a ground in addition to the impairment guaranty.

This view is confirmed by the personal-rights exception in the criminal cases. We have already seen how **State v. Bell** and the contract exception have been linked together. In **State v. Longino**, the Supreme Court of Mississippi mentioned the contract exception as if to indicate that its reason is fully in accord with the following: "We think that a change of decisions involving the interpretation of criminal statutes should have a prospective effect. This rule seems to be just and the most reasonable rule. This rule applies the same principle as the constitutional prohibition of ex post facto legislation. It will prevent injustice and also prevent cruel and unusual punishment." The court also cited **Ingersoll v. State**, which was a prosecution under a liquor law of 1853. The statute had been upheld by the courts but was repealed by an act of 1855. The repealing act had been held invalid in 1858. The Supreme Court of Indiana then stated: "Under such circumstances, it would be unjust—would be a violation of all principles of right—to hold that the act of 1853 was all this time in force, and the people incurring its penalties. It would make the law a concealed trap to catch victims." In **State v. O'Neil**, a case involving a change of decision on the constitutional validity of a penal statute, the Supreme Court of Iowa, after discussing the contract exception, stated: "These cases are cited, not as indicating any constitutional duty on the part of the courts of a state to protect a litigant in rights which he in good faith supposed he had already acquired by reason of previous decisions of the same court in other cases, but for the purpose of illustrating the extent to which a court may properly go in administering

the law for the purpose of effectuating justice; that is, for the purpose of rendering such decision as shall appeal to intelligent and fair-minded people as right and proper. * * * The assumption is that the statutory criminal law is to be administered in accordance with the general principles of right and justice recognized in the common-law system. * * * Respect for the law * * * is weakened if men are punished for acts which according to the general consensus of opinion they were justified in believing to be morally right and in accordance with law. * * * We do not believe such exception to be against public interest but rather in furtherance of justice. Since the Supreme Court of the United States has held that a change of decision in the construction of a substantive criminal statute or in a rule of criminal procedure does not violate the ex post facto prohibition and has rejected the contention that the guaranty of due process of law is infringed by overruling "well-established precedents" in a case of criminal contempt, the personal-rights exception of the criminal cases also must rest on the "principles of justice" rather than on constitutional grounds. And the inter-linking of this exception and the contract exception in the reasoning supporting each re-emphasizes that the "principles of justice" are the foundation of the latter too.

(For the sake of brevity, we have omitted various footnotes, giving citations, cross references and comments.)

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IN THE
Supreme Court of the
United States

OCTOBER TERM, 1943

No. 48

W. I. WREDDITH, JAMES G. MARTIN and A. R.
ORRIDGE,

Petitioners

vs.

THE CITY OF WINTER HAVEN, a municipal corpora-
tion, D. C.

Respondents

BROUGHT UP ON PETITION FOR
WRIT OF CERTIORARI FROM
THE CIRCUIT COURT OF
APPEALS FOR THE
FIFTH CIRCUIT

REPLY BRIEF OF PETITIONERS

D. C. HULL
ERSKINE W. LANDIS
JOHN L. GRAHAM
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Attorneys for Petitioners

IN THE
**Supreme Court of the
United States**

OCTOBER TERM, 1943

No. 42

W. J. MEREDITH, JAMES G. MARTIN and A. R.
OHMART,

Petitioners,

versus

THE CITY OF WINTER HAVEN, a municipal corpora-
tion, et al.,

Respondents.

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SUBJECT INDEX*

Topic	Page
Statement of the Case	1
First Question	6
The Duty of Federal Courts to Apply State Law	6
What is the Law of the State to be Applied Under Erie Doctrine—Stare Decises	6
Principles of Law Defined in Outman, Taylor and New Smyrna Beach Cases	8
Andrews v. Winter Haven—The "Made" Case	10
No Violation of Article IX, Section 6, Florida Con- stitution, as Construed by Florida Court	12
Table of Interest Payable on the Old Bonds and on Call of the New Bonds	14
Second Question—Bondholders' Right to Revert to Original Contract	15
Third Question—The Circuit Court of Appeals Should Have Adjudicated the Matters in Controversy	18

ALPHABETICAL LIST OF AUTHORITIES CITED

Cases	Page
Alabama Nat'l. Bank v. Mary Lee Coal & Ry. Co., 109 Ala. 288, 19 So. 404	10
American United Insurance Co. v. Avon Park, 311 U. S. 138, 61 S. Ct. 157	4
Andrews v. Winter Haven, City of, 148 Fla. 144, 3 So. (2nd) 805 1, 2, 4, 5, 10, 11, 12, 15	15
Bradford County v. Nuveen, 133 Fed. (2nd) 169	3
Chase National Bank v. Norwalk, Ohio, City of, 291 U. S. 431, 54 S. Ct. 475, 478	12
Chicot County v. Sherwood, 148 U. S. 529, 37 L. Ed. 546, 13 S. Ct. 695	18, 19
Columbia County Commissioners v. King, 13 Fla. 451	2, 3, 6, 12
Erie Railroad Company v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 1188	6
Gelpcke v. Dubuque, 1 Wall. (U. S.) 175, 17 L. Ed. 520	2
Howey v. Williams, 142 Fla. 415, 195 So. 181	3
Humphreys v. State, ex rel. Palm Beach Co., 108 Fla. 92, 145 So. 858	6
Hyde v. Stone, 20 Howard 170	19
Jefferson County v. Hawkins, Trustee, 23 Fla. 223, 2 So. 362	2, 4
Jefferson County v. Lewis, 20 Fla. 980	4
Kline v. Burke Const. Co., 260 U. S. 226, 67 L. Ed. 226, 43 S. Ct. 79	19
McClellan v. Carland, 217 U. S. 268, 54 L. Ed. 762, 30 S. Ct. 501	19
McGregor v. Provident Trust Co., 419 Fla. 718, 162 So. 323	7
New England Mutual Ins. Co. v. Mitchell, 118 Fed. (2nd) 414	7
Outman v. Cone, 141 Fla. 196, 192 So. 611	1, 3, 8, 9, 12

ALPHABETICAL LIST OF AUTHORITIES CITED

(Continued)

Cases	Page
Pierce v. Isaac,	
134 Fla. 666, 184 So. 509	17
State v. Ft. Myers, City of,	
145 Fla. 135, 198 So. 814	4
State v. New Smyrna Beach, City of,	
148 Fla. 482, 4 So. (2nd) 660	9, 12
State v. Sarasota County,	
118 Fla. 629, 159 So. 797	4, 5, 13
State v. Special Tax School Dist. No. 5 of Dade County,	
Fla.; 107 Fla. 93, 144 So. 356	1, 2
State v. Special Tax School Dist. No. 3 of Pinellas County	
Fla., 143 Fla. 557, 197 So. 127	13
State ex rel. Gillespie v. Walthal,	
124 Fla. 866, 169 So. 552	2
State ex rel. Nuveen v. Greer,	
88 Fla. 249, 102 So. 739	6
Sullivan v. Tampa, City of,	
101 Fla. 298, 134 So. 211	2, 3
Taylor v. Williams,	
142 Fla. 402, 195 So. 175	1, 3, 9, 12
Vero Beach v. Rittenoure,	
113 Fed. (2nd) 269	3
General Works	
American Jurisprudence, Vol. 14, Page 289	18
Corpus Juris Secundum, Vol. 21, Page 330	3
Legal Publications	
Illinois Law Review, Vol. 35, Page 121	3
Retrospective Operation of Overruling	
Decisions (Snyder),	3
Statutes, Rules and Constitutional Provisions	
Amendment to Section 6, Article IX,	
Florida Constitution	2, 9, 11, 12, 13, 15
Florida Constitution,	
Section 6, Article IX, as amended	2, 9, 11, 12, 13, 15
General Refunding Act of 1931, Chapter 15,772,	
Acts of 1931, Laws of Florida	2
Laws of Florida, Chapter 15,772; Acts of 1931	2

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 42

W. J. MEREDITH, JAMES G. MARTIN and A. B.
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tion, et al.

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BROUGHT UP ON PETITION FOR
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FIFTH CIRCUIT

REPLY BRIEF OF PETITIONERS

STATEMENT OF THE CASE

It is necessary for us to take issue with some of the assertions in the "Restatement of the Case" in the Brief of Respondents.

The statement is made (page 2) that the petitioners admit that, if the Federal Court must follow the decisions in *Andrews v. Winter Haven*, 148 Fla. 144, 3 So. (2nd) 805, *Outman v. Cone*, 141 Fla. 196, 192 So. 611, *Taylor v. Williams*, 142 Fla. 402, 195 So. 175, and *State v. Special Tax School District No. 5 of Dade County*, 107 Fla. 93, 144 So. 356, their prayer must be denied.

This is incorrect.

We were careful to point out that the Florida Supreme Court, in none of these cases, has ever receded from the principle announced, over 70 years ago, in **Columbia County Commissioners v. King**, 13 Fla. 451, which it adopted from the holding of this Court in **Gelpcke v. Dubuque**, 1 Wall. (U.S.) 175, that if a contract when made was valid under the laws of the State, as then expounded and administered, its validity is not impaired by a subsequent decision altering the construction of the State law.

We also demonstrated that in **State v. Special Tax School District No. 5**, the Florida Supreme Court affirmed the holding in **Sullivan v. City of Tampa**, upon which we rely, and reiterated that the Court would read nothing into the 1930 Amendment to Section 6, Article IX, of the Florida Constitution, by implication.

In the **School District case**, it was emphasized that the 1930 Amendment is "silent as to the interest rate of refunding bonds and the price at which they may be sold," and that there was certainly no intent that "this power of refunding should be impaired or unduly burdened."

This decision was rendered after the enactment of the General Refunding Act of 1931, and the refunding bonds there, as here, were issued under that Act.

Also, we took pains to point out that the Florida Supreme Court, in none of these cases, nor anywhere else, has ever held invalid a provision similar to that in the refunding bond contract involved in this case, to the effect that, if any of the refunding bonds should be adjudged illegal or unenforceable, in whole or in part, then the holders of the refunding bonds shall be entitled to assume the position of holders of a like amount of the outstanding indebtedness thereby refunded, and as such to enforce their claim for payment, but that, under Florida law, and especially under the decisions in **Jefferson County v. Hawkins, Trustee**, 23 Fla. 223, 2 So. 362, and **State ex rel. Gillespie v. Walthal**, 124 Fla. 866, 169 So. 552, this provision of the Winter Haven refunding bond contract is valid, regardless of **Andrews v. Winter**

Haven, Outman v. Cone, Taylor v. Williams, or any other Florida decision.

Respondents state (page 2) that petitioners have not alleged that they knew of the opinion in **Sullivan v. City of Tampa, 101 Fla. 298, 134 So. 211**, or that they relied upon it, or that they acquired their bonds before the Florida Supreme Court decided the **Outman case**.

We didn't allege it because it was not necessary.

The prevailing rule is that reliance need not be affirmatively shown, but will be implied from the attendant circumstances; and that reliance will be presumed until it is affirmatively proved that there was no reliance.

21 Corpus Juris Secundum 330
Retrospective Operation of Overruling
Decisions (Snyder), 35 Illinois Law
Review, 121, Text 131, Footnote 111.

In **County Commissioners of Columbia County v. King, 13 Fla. 451**, it was not made to appear that the holders of the bonds knew of or relied upon the prior decision in which the validity of railroad aid bonds had been upheld, but only that "the case of **Cotten v. the Commissioners of Leon County** was pending, if not already decided by the Supreme Court, at the very moment that the earliest of the bonds of Columbia County were being issued, and they thus went forth upon the market and into the hands of third parties, not only sanctioned by the Legislature, but by the Judicial branch of the Government, and thus they were treated and accepted by the world as having the very highest and strongest endorsement as to their validity."

Respondents state (page 5) that petitioners claim to be the owners of bonds issued under a "void" agreement between the City of Winter Haven and its refunding agents.

It is not shown anywhere that the agreement was void, even though it may have resembled, in some of its features, the contracts that were referred to in the cases of **Taylor v. Williams, 142 Fla. 402, 195 So. 175; Howey v. Williams, 142 Fla. 415, 195 So. 181; Bradford County v. Nuveen, 133 Fed. (2nd) 169; Vero Beach v. Rittenoure, 113 Fed. (2nd)**

269, and **American United Insurance Co. v. Avon Park**, 311 U. S. 138, 61 S. Ct. 157.

Be that as it may, petitioners do not rely upon the contract between the City and its refunding agents, as the plaintiff in **Andrews v. Winter Haven**, 148 Fla. 144, 3 So. (2d) 805, apparently did, but on the City's contract with its creditors, embodied in the refunding bonds and interest coupons and in the resolutions authorizing them.

The validity of refunding bonds is not affected by the validity or invalidity of the contract between the issuing unit and its refunding agents.

State v. Sarasota County,
118 Fla. 629, 159 So. 797.

State v. City of Ft. Myers,
145 Fla. 135, 198 So. 814.

Respondents persist, throughout their brief, in referring to such part of the deferred interest as the City agreed to permit the bondholder to recoup, in the event of a call of the bonds before their maturity, as a "premium."

The fact is that, when the City decided to refund its outstanding bonds, by issuing the 1933 refunding bonds, the then outstanding bonds that were being refunded with Series A Refunding Bonds bore interest to maturity at 6 per cent and were not callable. The then outstanding bonds that were to be refunded by Series B Refunding Bonds bore 5½ per cent interest and were not callable.

Under Florida law, a county or municipal bond continues to bear interest, after maturity, at the contract rate specified in the bond, until paid. **Jefferson County v. Lewis**, 20 Fla. 980. **Jefferson County v. Hawkins, Trustee**, 23 Fla. 223, 2 So. 362. The City was already obligated, not only to pay the principal, but to pay interest at the full rate of 6 per cent on the 6 per cent bonds, and at 5½ per cent on the 5½ per cent bonds, not only until maturity of the bonds, but until they were paid. But the City was unable to pay the full amount of the maturing principal and the currently maturing interest on its bonds, as it fell due, so the time of payment of the principal was extended or deferred, and

the time of payment of a portion of the interest was also deferred, until the maturity of the refunding bonds that were issued to take the place of the old bonds. The refunding bonds were made callable, not upon payment of a "premium," above principal and interest, but upon payment of the full amount of principal and a specified portion of that part of the interest that was deferred until maturity of the bonds; the proportion of the deferred interest to be paid on call being dependent upon the time of the exercise of the City's option to call the refunding bonds before their maturity.

The provision for payment of a portion of the deferred interest, on call of the bonds, did not contemplate the payment of a premium, but simply provided a method whereby the holder of the bonds was permitted to recoup a portion of what the City was obligated to pay him at the maturity of the bonds.

See: **State v. Sarasota County,**
118 Fla. 629, 159 So. 797.

Respondents assert (page 12) that the City paid its refunding agents a fee of \$35,100.00 and that petitioners' Exhibit B (Tr. 86) says this amount "was added to the debt of the City."

A careful check of Exhibit B fails to disclose any such statement.

Respondents assert that this "was admitted in the State Court (p. 150 Tr.)".

Upon referring to page 150 of the Transcript, we find that the assertion that the City paid a refunding fee that "was added to the debt of the City" is something that the City set up, in its Answer in the **Andrews case**, long after the transaction occurred, as an excuse to evade its obligation to pay a portion of the interest on its bond debts.

Petitioners would respectfully point out (1) that if the City paid the fee, it didn't pay it to petitioners, (2) that if the fee was paid, it was paid to the City's own agents, (3) that the petitioners' refunding bonds have been validated in the courts of Florida, in statutory bond validation proceed-

ings, and cannot be invalidated by the City's subsequent action in paying a fee to its own agents, and (4) that the payment by the City of a fee to its refunding agents does not affect, one way or the other the validity of the City's contract with the holders of its refunding bonds.

FIRST QUESTION

On at least one matter, the parties to this litigation are in agreement. Under the rule announced by this Court in **Erie Railroad v. Tompkins**, "the law to be applied" in this case is the law of Florida.

We have earnestly contended in our main brief that the law of Florida, as declared by the Florida Supreme Court at or about the time of the issuance of the refunding bonds here involved, is the law applicable to this case, under the rule announced in the case of **Columbia County Commissioners v. King**, 13 Fla. 451, and approved in the cases of **State ex rel. Nuveen v. Greer**, 88 Fla. 249, 102 So. 739, and **Humphreys v. State ex rel. Palm Beach Co.**, 108 Fla. 92, 145 So. 858. This, we contended, is the law of Florida applicable under the rule of the **Erie Railroad case**. We have set forth our contentions in full, and we shall not repeat them here.

Since filing our main brief and reading the reply brief of respondents, however, we have had occasion to re-examine the recent decisions of the Florida Supreme Court relied upon by respondent as justification for repudiating the provisions of the refunding bonds relative to payment of "deferred interest." We are firmly convinced that the law of Florida, as defined in these recent cases relied upon by respondents, not only fails to support the theory of the case advanced by respondents, but is entirely consistent with our position in this litigation.

What Is Law of State To Be Applied Under Erie Railroad Case—Stare Decisis Doctrine

In the case of **Erie Railroad Company v. Tompkins**, 304 U. S. 64, 58 S. Ct. 817, Text Page 822, this Court said:

"Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the **law of the state**. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern." (Emphasis ours.)

The following statement in the opinion of the Circuit Court of Appeals for the Fourth Circuit, in the case of **New England Mutual Life Insurance Company v. Mitchell**, 118 Fed. (2nd) 414, Text Page 420,* illustrates the rule governing the applicability of state law as evidenced by judicial decisions:

"In ascertaining the applicable law of the state, we are to consider court decisions and other available sources of local law; and we are to apply court decisions in the light of the well-established stare decisis rule and its limitations."

In discussing the doctrine of Stare Decisis, the Florida Supreme Court, in the case of **McGregor v. Provident Trust Company of Philadelphia**, 119 Fla. 718, 162 So. 323, Text Page 328, said:

"So well known as to render discussion of it almost superfluous, it is a maxim to the effect that, when a **point of law** has been settled by decision, it forms a precedent which is not afterwards to be departed from." (Emphasis ours.)

It is the point or principle of law that really matters in giving effect to the doctrine of Stare Decisis. It is the **point or principle** of state law established by decisions of state courts that state courts should and federal courts must apply to new cases as they arise.

It is true, of course, that abstract principles of law are not to be stripped from their factual moorings, but actual facts are of importance only in illustrating and limiting the applicability of the **principles of law**. It is of no consequence,

* Certiorari denied, 62 S. Ct. 60.

in evaluating the effect of a decision as a precedent, whether or not the facts **assumed** by the Court to exist, actually did exist. This obvious conclusion is illustrated in the following statement from **14 American Jurisprudence, Page 289**:

"Even if the court, announcing the conclusion, misapprehends or mistakes the facts, the conclusion, to be of any value as a precedent, must be taken as applicable to the facts **as assumed by the court**; they, as concerns the judgment, are the facts and, whether existing or nonexistent, either prompt or compel the **conclusion of law** that determines the judgment." (Emphasis ours.)

Principles of Law Defined in Outman, Taylor and New Smyrna Beach Cases

We look to the cases upon which the respondents so confidently rely as precedents to defeat the provisions of the refunding bonds relating to the payment of deferred interest. In each of these cases, we find the facts, which either existed or were **assumed** by the Court to have existed, to bring it within sound principles of Florida constitutional law. The **law of these cases** is that, under **Article IX, Section 6**, of the **Florida Constitution, as amended**, the obligation of bonds outstanding prior to the adoption of that constitutional amendment cannot be increased, directly or indirectly, by the issuance of refunding bonds, without the approval of the people to be taxed, and that any provisions of refunding bonds that do increase the burden on the taxpayers, over the burden imposed by the original bonds, are unconstitutional, unenforceable and void.

The case of **Outman v. Cone, 141 Fla. 196, 192 So. 611**, involved the right to call bonds under a provision authorizing their call, at that particular time, without payment of any "deferred interest," if the money made available to pay the bonds was obtained from sources other than the sale of new refunding bonds. If, however, the money to call the bonds was to be raised by selling new refunding bonds, a

portion of the deferred interest was to be paid.* The Florida Court stated that it was "apprised of no good reason for the difference" in amounts to be paid, depending on the source of payment.

The Florida Court either found or assumed the fact to be that payment of the deferred interest as provided in the bonds and authorizing resolution would, when added to the expense of refunding, make the bonds more burdensome than the original bonds, and, therefore, in conflict with **Article IX, Section 6**, of the **Florida Constitution**. We do not know whether, as a matter of fact, the payment of the portion of the deferred interest required in such bonds, together with the refunding fee, would exceed the limitations prescribed by **Article IX, Section 6**, but the Florida Court apparently found or assumed that such limitation would be exceeded.

In the case of **Taylor v. Williams**, 142 Fla. 402, 195 So. 175, the Florida Court again either found or assumed the fact to be that the deferred interest provisions of the bonds under consideration would increase the burden of the taxpayers, in violation of **Article IX, Section 6**. The **Taylor case**, however, also involved provisions pledging revenues, in addition to those pledged in support of the original bonds, which were undoubtedly in violation of **Article IX, Section 6**, which is a matter not involved in the case at bar.

The case of **State v. City of New Smyrna Beach**, 148 Fla. 482, 4 So. (2nd) 660, was a statutory proceeding to validate a new issue of refunding bonds. Just how it could possibly adjudicate the obligation of the City to pay deferred interest on an old issue of refunding bonds is difficult to understand. At any rate, the Florida Court, in this case, did not say anything or decide anything which purported to extend the principles of law recognized and defined in the **Outman** and **Taylor cases**.

We have no quarrel with the principles of law announced in those cases. The Florida Constitution was expressly amended by the people to reserve to them the right to ap-

* Such ambiguous provision is not contained in the bonds herein involved.

prove or disapprove the creation of new public debts and long term financial obligations. We do say, however, that whether or not a new debt or financial obligation is created by a refunding bond, in excess of the amount of the debt and obligation of the original bond, is a matter that can be demonstrated in any particular instance by simple arithmetic!

Andrews v. City of Winter Haven— The "Made" Case

While pointing to the case of **Andrews v. City of Winter Haven**, 148 Fla. 144, 3 So. (2nd) 805, as clinching their argument as to what the law of Florida is, the respondents (the same City of Winter Haven) has surprisingly little to say about the amendment to the bill of complaint in this case, which demonstrates that this was a "made" case. The record of this "made" case is before this Court (T. 109-179) and discloses that, on the busy morning of June 23, 1941, Andrews and the City were able to file complicated pleadings in the case, present involved constitutional questions before the Circuit Court of Polk County, Florida, obtain a decree that a Philadelphia lawyer could hardly draft in two days, and file that decree for record, at the County Seat in Bartow, about twelve miles from the place of the hearing—all in plenty of time for an early lunch! We pointed out in the amendment to the complaint that the real interests of Andrews and the City were identical—to-wit, to repudiate the obligation on the City's bonds!

The following from the opinion of the Supreme Court of Alabama, in the case of **Alabama National Bank v. Mary Lee Coal & Railway Co.**, 109 Ala. 288, 19 So. 404, Text Page 409, is particularly pertinent:

"But, beyond this, a decree rendered by consent, upon a collusive and fraudulent presentation of the case, is to be taken as the act of the parties thereto, and not as the judgment of the court. As said by Lord Brougham in *Earl of Brandon v. Beecher*: 'A sentence is a judicial determination of a cause agitated between real parties, upon which a real interest has

been settled. In order to make a sentence, there must be a real interest; a real argument, a real prosecution, a real defense, a real decision. Of all these requisites, not one takes place in the case of a fraudulent and collusive suit. There is no judge; but a person, invested with the ensigns of a judicial office, is misemployed in listening to a fictitious cause proposed to him. There is no party litigating. There is no party defendant,—no real interest brought into question.” 3 Clark & F. 507; *Lawrence Manuf’g Co. v. Janesville Cotton Mills*, 138 U. S. 552, 11 Sup. Ct. 402; *Texas & P. Ry. Co. v. Southern Pac. Co.*, 137 U. S. 48, 11 Sup. Ct. 10.”

Despite the somewhat abashed assurance with which the respondents point to the **Andrews case**, involving, as it did the very same issue of bonds as is involved here, we do not believe that this case can afford any real comfort to the respondents, even if it be conceded to state the law of Florida that the federal courts must apply. The record of the **Andrews case** was made by **Mr. Andrews** and the **City**. The petitioners had nothing to do with making that record. The Supreme Court of Florida was bound to regard as the facts of the case the allegations contained in the City’s answer which were not put in issue by Mr. Andrews. The facts which the Florida Court **found**, or **assumed to find**, from this record, must be regarded as the **facts of that case** by the federal courts who look to it as a precedent in ascertaining the principles of law to be applied to other cases.

It is not surprising to find, under the circumstances connected with this “made” case, that the facts presented to the Florida Supreme Court were such as to require the very conclusions which the Florida Court reached! For example, one of the allegations in the answer, which on hearing on bill and answer was necessarily admitted under Florida practice, was to the effect that the amount of a refunding fee of \$35,100.00 was added to the original debt without a vote of the people, and that this, together with the deferred interest, exceeded the limitations of **Article IX, Section 6**, of the **Florida Constitution** (T. 149-150).

We hasten to assure the Court, however, that the present case is no "made" case. There is nothing in this record to show that **Article IX, Section 6**, of the **Florida Constitution** has been violated. As a matter of fact, we shall hereafter endeavor to demonstrate mathematically that there has been no such violation. It is no concern of ours whether Mr. Andrews and the City of Winter Haven agree to purported facts which require the Court to declare invalid a portion of Mr. Andrews' bonds. What we do say is that the application of the law invoked by Mr. Andrews to the state of facts submitted by him requires a judgment in our favor when applied to the **real facts**.

The petitioners are entitled to have a decision determining **their rights**, rendered on the basis of the **facts and considerations adduced by them**.

Chase National Bank v. City of Norwalk, Ohio,
291 U. S. 431, 54 S. Ct. 475, 478.

**No Violation of Article IX, Section 6,
As Construed By Florida Court**

If the deferred interest provisions of the petitioners' refunding bond contract are to be governed by the decisions of the Florida Court in the **Outman, Taylor, Andrews, and New Smyrna Beach cases**, and if such cases as **Columbia County Commissioners v. King** are to be entirely disregarded, then it would appear that the holdings in these later cases may thus be summarized: "When deferred interest is payable under the provisions of callable refunding bonds, and the amount of such deferred interest payable at the time the bonds are called for payment, exceeds the obligation of the original bonds, all without approval by the vote of the people, **Article IX, Section 6**, of the **Florida Constitution** is violated, and the provisions of the bonds relating to deferred interest are void and unenforceable."

The facts **existing or assumed** by the Florida Court to exist in the above cases disclosed to the satisfaction of the Florida Court that the deferred interest there involved was a financial burden on the taxpayers, in excess of that imposed

by the original bonds, in violation of **Article IX, Section 6, of the Florida Constitution.**

There is nothing in the **principles of law** applied by the Florida Court in the above cases to support the inference that appears throughout the brief of respondents that all deferred interest provisions are unconstitutional. That only such deferred interest provisions as operate to increase the taxpayers' burden are invalid is apparent from the fact that the Florida Supreme Court, in the case of **State v. Sarasota County, 118 Fla. 629, 159 So. 797**, specifically approved deferred interest provisions basically similar to those here involved.

This is further evidenced from the case of **State v. Special Tax School District, No. 3, of Pinellas County, 143 Fla. 557, 197 So. 127**. In that case the Florida Supreme Court said:

"The bonds proposed to be refunded provide among other things that they may be called 'on or prior to October 1, 1942, at par and accrued interest at the rate then prevailing as enforceable and collectible.' They are being called under this provision and all prerequisites to the call have been followed.

"There is no authority whatever for enforcing the deferred interest coupons **if the outstanding bonds are called prior to October 1, 1942**, and replaced with funds realized through tax sources or from any source including the sale of new refunding bonds. The chancellor recognized this and so provided in his validating decree. His decision is supported by *Outman v. Cone, Fla., 192 So. 611*; *Taylor v. Williams, Fla. 195 So. 175*." (Emphasis ours.)

It is clearly inferred by the language above quoted that if the bonds were called **after** October 1, 1942, there would have been liability for deferred interest.

Respondents attempt to make much of the fact that, if the bonds had been called within the first three years after

April 1, 1933, the payment of one-half of the deferred interest for ten years, plus the current coupon rate, would have resulted in an obligation exceeding that of the original bonds. The respondents set forth a table of interest payable on various dates at Page 9 of their brief.

But what the respondents overlook is that this case does not involve any such factual situation. As a matter of fact, the passage of time has now forever precluded the possibility of the question so persistently urged by respondents ever arising at all. The call with which we are here concerned was for October 1, 1941. (T. 97.)

Whether the deferred interest provisions under attack increased the obligation of the taxpayers over that resting upon them under the old bonds can be mathematically determined. We set forth a table showing the total interest payable on the old bonds, if they had not been refunded, and the total interest payable, both on currently maturing coupons and as deferred interest, on the refunding bonds, computed from April 1, 1933, to October 1, 1941, the date on which the bonds were proposed to be called.

Series A Bonds	Old Bonds (6%)
Amount Owed April 1, 1933— \$1,957,123.58	\$1,957,123.58
Total Interest to Oct. 1, 1941— \$ 885,598.41	\$ 998,133.02
(Including deferred interest payable on call Oct. 1, 1941.)	

Series B Bonds	Old Bonds (5½%)
Amount Owed April 1, 1933— \$ 190,931.20	\$ 190,931.20
Interest to Oct. 1, 1941— \$ 86,396.36	\$ 80,260.35
(Including deferred interest payable on call Oct. 1, 1941.)	

Summary

Total Interest on all old bonds to October 1, 1941	\$1,087,393.35
Total Interest on Refunding Bonds Series A and B, including portion of deferred interest due on call Oct. 1, 1941	\$ 971,904.77
Total Savings in interest	\$ 115,398.58*

Thus it is obvious that the refunding fee of \$35,100.00 could not have resulted in increasing the burden on the taxpayers in violation of **Article IX, Section 6**, of the **Florida Constitution**, within the principles of law announced by the cases relied upon by the respondents themselves.

SECOND QUESTION

While we are confident that the law of Florida, as declared by the decisions of the Florida Supreme Court, when applied to the **real facts** involved in this litigation, will lead to a different conclusion than that which was necessary in the "made" case of **Andrews v. City of Winter Haven**, the petitioners have valuable contract rights which became available to them in the event that the payment of any portion of the deferred interest should be found to be unenforceable.

To illustrate this, let us go back to 1933 and consider the situation in the light of conditions then existing. The City of Winter Haven had outstanding approximately \$2,000,000.00 of **non-callable** bonds, most of which bore interest at the rate of 6 per cent and the balance at 5½ per cent. Most of these bonds would not mature for many years to come.

The holders of these outstanding non-callable bonds were somehow induced to exchange them for refunding

* In computing the interest on Series A Refunding Bonds payable on call October 1, 1941, we included one-half of the deferred interest for 10 years on each bond, \$72.50, plus the currently maturing semi-annual interest at the coupon rate provided in the bonds. In computing the interest on Series B Refunding Bonds payable on call October 1, 1941, we included one-half of the deferred interest for 10 years on each bond, \$47.50, plus the currently maturing semi-annual interest at the coupon rate provided in the bonds.

bonds, dated April 1, 1933, which were **callable** evidences of of the same indebtedness evidenced by the original bonds, but which, in the event of call, bore a lesser rate of interest. Obviously, those who exchanged the original bonds for the refunding bonds were acquiring in this transaction securities inferior to the ones they had theretofore possessed, judged by the standards of the money markets of the world.

The exchange of the non-callable bonds for callable bonds was consummated pursuant to the provisions of a resolution adopted by the City of Winter Haven. This resolution constituted the contract between the City and the bondholders. It was in this resolution that the rights and obligations of the City and its bondholders were specifically outlined and defined.

It is a matter of common knowledge that in most commercial contracts the parties endeavor to anticipate and provide for contingencies that may arise in the future. The holders of the old Winter Haven bonds were no exception. While they voluntarily accepted a cut in interest and callable bonds, they prudently insisted upon contractual safeguards designed to reasonably assure them of the financial returns promised in the refunding bonds. Section 20 of the refunding resolution provided just this kind of assurance.

If it should be judicially determined that the refunding bonds held by the petitioners can be called before maturity by the now prosperous City of Winter Haven, just eight and one-half years after that City was hovering on the brink of financial disaster, without paying the petitioners the portion of the deferred interest provided for in such refunding bonds, then the contingency has arisen which was anticipated and provided for in Section 20 of the refunding resolution (Tr. 83). In that event, the petitioners are "entitled to assume the position of holders of a like amount of the indebtedness . . . refunded and as such enforce their claim for payment." In plain and simple language, the petitioners are entitled to 6 per cent interest on the **indebtedness** evidenced by Series A Bonds and $5\frac{1}{2}$ per cent on the **indebtedness** evidenced by Series B Bonds.

We find no plausible defense even suggested in the brief of respondents to a judicial determination of our rights under Section 20 of the refunding resolution. Quite possibly the explanation may be that there is no plausible defense!

About the best that respondents have been able to suggest to the Court as a reason for declining to recognize and determine the rights of petitioners under Section 20 is that this would make the obligation of the City even greater than it would have been if repudiation of deferred interest had not been undertaken in the first instance! We submit that this position is utterly devoid of merit and logic. The mere fact that the City failed to consider the consequences, under its solemn contract, of embarking upon a course of repudiation, is entitled to no weight in courts of justice where contract rights are regarded as sacred and entitled to protection.

The Supreme Court of Florida, in the case of **Pierce v. Isaac**, 134 Fla. 666, 184 So. 509, in no uncertain terms, stated the rule supported by judicial decisions everywhere relating to the enforceability of contract obligations. In the **Pierce case**, a tax payer sought to enjoin the payment of a refunding fee by a public taxing district. The basis of the taxpayer's suit was that the fee, which the district was about to pay, had been increased without reason, over that provided in an earlier contract with the very same refunding agent to do the same job. While the Florida Court praised the plaintiff taxpayer for his vigilance in attempting to conserve the public revenues, it nevertheless unhesitatingly declared that the parties were competent to contract, and their contract would be enforced, even if one of the parties had driven a hard bargain. The language of the Florida Supreme Court, in the light of the **Pierce case**, can afford respondents little comfort:

"The general rule is that competent parties shall have the utmost liberty of contracting and their agreements voluntarily and fairly made will be upheld and sustained by the courts. All parties sui juris are free to make whatever contract they may choose so long

as no fraud or deception is practiced and there is no infraction of law. The fact that one of the parties to a contract made a hard bargain will not alone avoid a contract."

In considering this question, it is well to bear in mind that this is not an action for a money judgment, but one seeking a declaration of petitioners' contract rights.

They are entitled to such an adjudication before being required to surrender their present evidences of the City's indebtedness to them.

THIRD QUESTION

The Circuit Court of Appeals Should Have Adjudicated the Matters in Controversy

In his clear and vigorous dissenting opinion in this case, Circuit Judge Sibley said:

"There being a presently acute justiciable controversy, I think we are bound to declare the rights of the parties, though the grant of injunction is discretionary. The Constitution extends the judicial power of the United States to controversies between citizens of different States arising under the laws of a State, just as fully as to controversies arising under the Constitution and laws of the United States. There is the same power and the same duty to decide both classes of cases. This case involves no invasion of high State functions or policies as to which caution is due, but only a question of how much this City owes these bondholders on calling their bonds for payment before due. Such questions have been decided by federal courts from the beginning." (Tr. 198-199)

The views of Judge Sibley expressed in the above quoted language are fully sustained by the decisions of this Court.

In the case of **Chicot County v. Sherwood**, 148 U. S. 529, 37 L. Ed. 546, 13 S. Ct. 695, (148 U. S. Text Page 534) this

Court quoted with approval from the opinion in the early case of **Hyde v. Stone**, 20 How. 170, 175, as follows:

"... But the courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction. *Suydam v. Broadnax*, 14 Pet. 67; *Union Bank v. Jolly's Administrators*, 18 How. 503. This principle has been steadily adhered to by this court."

This Court, in its opinion in the case of **McClellan v. Carland**, 217 U. S. 268, 54 L. Ed. 762, 30 S. Ct. 501, (217 U. S. Text Page 281) stated the following:

"So far as the record presented to the Circuit Court of Appeals shows, the only ground upon which the Circuit Court acted in postponing the suit was because the State of South Dakota, which had applied to be made a party, and which application was denied, was about to begin a suit in the state court to determine an escheat of the estate of John C. McClellan, therefore the action was stayed, first, until the beginning of such suit, and then until it was determined. It, therefore, appeared upon the record presented to the Circuit Court of Appeals that the Circuit Court had practically abandoned its jurisdiction over a case of which it had cognizance, and turned the matter over for adjudication to the state court. This, it has been steadily held, a Federal court may not do. *Chicot County v. Sherwood*, 148 U. S. 529, 534."

Both the **Chicot County** and **McClellan** cases were cited with approval by this Court in the case of **Kline v. Burke Construction Co.**, 260 U. S. 226, 67 L. Ed. 226, 43 S. Ct. 79.

We are confident that the record in this case discloses that the Circuit Court of Appeals should have reversed the decree of the District Court, on the merits, and should have

adjudicated the rights of the petitioners, rather than reversing that decree only to the extent necessary to bar the doors of the federal courts to the petitioners.

Respectfully submitted,

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No. 923 42

IN THE SUPREME COURT OF
THE UNITED STATES

OCTOBER TERM, 1942

W. J. MEREDITH, JAMES G. MARTIN
and A. R. OHMART,

Petitioners

vs.

THE CITY OF WINTER HAVEN, a
municipal corporation, et. al.,

Respondents

BRIEF OF RESPONDENTS IN OPPOSITION
TO GRANTING OF WRIT OF CERTIORARI

✓ GILES J. PATTERSON,
Jacksonville, Florida

HARRY E. KING,
Winter Haven, Florida

Attorneys for Respondents.

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STATEMENT OF THE CASE

The "Statement of Matters Involved" in the Petition contains conclusions and assumptions of fact that are not in the record, but the opinion of the Circuit Court of Appeals contains an accurate statement of the facts and issues. There is no conflict of fact since the case was decided on Defendants' Motion to Dismiss the Complaint.

The decision of the majority of the Circuit Court of Appeals rests upon seven conclusions:

1. "Every question presented for decision * * * * is a question of State cognizance to be determined under controlling State law".

2. "Our examination of the state of the law in Florida on the matters in issue shows that *it is not clear, settled and stable, but quite the contrary*".
3. "In the *Sullivan* case (the case so strongly relied on by the Petitioners) there was no question of deferred or accumulated interest coupons, none, therefore, of the proportion of them which could be paid in the event of call and redemption of the bonds before maturity, nor in the later cases which Appellants claim are in conflict with it, was there any question, as here, of whether under Florida decisions * * * the coupons should be held valid under the *Sullivan* case, notwithstanding the later rulings".
4. "It has been the rule of the Federal Courts where questions of State law involving provisions of statutes or of Constitutions, especially when dealing with matters of general public concern in a particular State, to decline to determine the State law and to remit the litigants to the State Courts for their determination".
5. "It would be especially unwise here for the Federal Court to undertake in a Declaratory Judgment to determine the questions here presented".
6. "It would be undertaking to declare the public policy of the State in respect of obligations of its municipalities".
7. "Especially in equity cases is it true that Federal Courts * * * will refrain from exercising it to determine State law".

Judge Sibley, in his dissenting opinion, said that because of the decisions of the State Court, the Federal Court was

“compelled to accept it (them) as the law of Florida”, but that Petitioners should receive

“so much interest promised in the old bonds as would make good the loss caused by the penalty enforceable on the new bonds”,

because that question had not been

“foreclosed by the decision in the *Andrews* case”.

The only real difference between the majority and the minority opinions is as to whether the decisions of the State Court of Florida were “clear, settled and stable” in their rulings.

The Petition should be denied because the majority of the Court of Appeals held that the law of Florida, as applied to Plaintiffs’ claims, is not only “not clear, settled and stable; but is quite the contrary”; Petitioners should, therefore, be remitted to the State Court for a determination of their rights. This decision accords with the decisions cited by the Court of Appeals and with the action of this Court in *Thompson vs. Magnolia Petroleum Co.*, 309 U. S. 478, and *Wichita Royalty Co. vs. City National Bank*, 306 U. S. 103. In the last cited case this Court reversed the Fifth Court of Appeals because it did construe a later Texas decision as a reversal of an earlier one. The petition should also be denied if, as Judge Sibley said, the Federal Court is bound to follow the decisions of the Florida Supreme Court, especially that of *Andrews vs. Winter Haven*, 148 Fla. 144, 350 (2d) 805, which denied to a Florida holder of bonds of the same issue, the principal prayer of Petitioners. The question of whether Petitioners are entitled to an equitable recoupment is a question of local law and

should also be first determined by a State Court, since it necessarily involves an exercise of equitable discretion by the Trial Court, and a review by this Court would constitute merely an appeal from the Circuit Court.

The decision in the *Sullivan* case (101 Fla. 298, 134 So. 211) is not in conflict with the decisions of the Florida Court in *Outman vs. Cone*, 141 Fla. 196, 192 So. 611, *Taylor vs. Williams*, 142 Fla. 402, 195 So. 175, and 142 Fla. 562, 195 So. 184, *State vs. Special Tax School District No. 3*, 143 Fla. 557, 197 So. 127, *Andrews vs. Winter Haven*, supra, and *State vs. City of New Smyrna Beach*, 148 Fla. 482, 1 So. (2d) 660. In fact Petitioners claim is only that the decisions in those cases are inconsistent with the reasoning of the opinion in the *Sullivan* case, not that they constitute a reversal of it. The form in which the "Questions Presented" is phrased shows that they have evaded making such a claim and seeks to create that impression. Petitioners do not claim that the Supreme Court of Florida ever held that holders of bonds bearing deferred interest coupons have a right to make good any loss upon a theory of equitable subrogation, or that the majority opinion is in conflict with Florida law on this subject. *Jefferson Co. vs. Hawkins*, 23 Fla. 223, 2 So. 362, the only case cited by them (P. 29), held that valid bonds could not be paid by the delivery of void refunding bonds. There is no Federal question involved in this case and since Petitioners have not, either in their Petition or brief, shown that the applicable law of Florida is "clear, settled and stable" in support of their argument, or in conflict with the decision of the Circuit Court of Appeals, the Petition should be denied.

By a circuity of reasoning Petitioners seek to utilize the decision in *Gelpeke vs. Dubuque*, 1 Wall. (U. S.) 175.

as a basis for their petition. In order to justify the use of the decision in *Gelpcke vs. Dubuque*, supra, and other similar decisions it would be necessary to show as a matter of fact that the State Court has reversed its earlier decision which was in effect when the bonds were issued. The facts in this case are entirely different because:

1. In that case, the Supreme Court of Iowa first held constitutional a statute of the State authorizing the City to issue bonds, and plaintiff purchased his bonds in reliance upon the statute and decision; after which the Supreme Court of Iowa expressly reversed its former decision and held the statute unconstitutional, and the bonds void. No such situation is presented by this record.

2. As the Circuit Court of Appeals points out, *Sullivan vs. Tampa*, supra, did not hold that the City had power to issue bonds carrying deferred interest coupons with provisions for redemption similar to those contained in the bonds of Winter Haven.

3. The later Florida cases not only did not reverse *Sullivan vs. Tampa*, supra, but in *Miami vs. State*, 139 Fla. 598, 190 So. 774, the Florida Court implied that there was no inconsistency in the decisions because of the difference in the factual situation involved.

4. The bonds involved in the *Sullivan* case were issued under Chap. 11855, Acts of 1927, passed three years before the adoption of the Amendment to Sec. 6, Art. IX of the Florida Constitution. The bonds in this case were issued under Chap. 15772, enacted in 1931, after that Amendment was adopted. There are many points of distinction between

these Acts: for example, the Act of 1927 contained no limitation on the price that could be paid for redemption; the 1931 Act limits the price at which the City could redeem to the par value of the bonds. (See Sec. 3 of that Act, Appendix A).

5. *Outman vs. Cone*, *Taylor vs. Williams*, *State vs. Special Tax School District No. 3*, *Andrews vs. Winter Haven* and *State vs. City of New Smyrna Beach*, op. cit. supra, which have expressly held that the City may redeem at par its bonds carrying deferred interest coupons, are only a few in a long line of Florida cases construing the proviso in the Amended Sec. 6, Art. IX that permits the issue of refunding bonds without an election. All of those cases have held various plans, schemes or provisions, that were intended to evade the express prohibition against issuing bonds without an election, to be void.

— *Bal County vs. State*, 116 Fla. 656, 157 So. 1; *State vs. Citrus County*, 116 Fla. 676, 157 So. 4; *Pierce vs. Isaac*, 134 Fla. 666, 184 So. 509; *Motes vs. Putnam County*, 143 Fla. 134, 196 So. 465; *Suwannee County vs. State*, 147 Fla. 477, 2 So. (2d) 850; *Miami vs. State*, 139 Fla. 598, 190 So. 774; *Fahs vs. Kilgore*, 136 Fla. 701, 187 So. 170; *Kathleen Citrus Co. vs. City of Lakeland*, 124 Fla. 659, 169 So. 356; *Boykin vs. Town of River Junction*, 121 Fla. 902, 164 So. 558; and *Brash vs. State Tuberculosis Board*, 124 Fla. 167, 167 So. 827 and 124 Fla. 652, 169 So. 218.

The *Outman* opinion, (which preceded by several years *Andrews vs. Winter Haven*), expressly held that provisions similar to those of the bonds involved in this case could

not be included, unless the issuance of the bonds had been approved by the taxpayers, because

"refunding bonds constitute nothing more than an extension of the original obligation under the same taxing power, and that if more is attempted, the refunding issue must be approved by the freeholders

* * * If new or additional or more burdensome terms are to be attached to the refunding bonds, Sec. 6 of Art. IX required that they be approved by the freeholders";

that the bonds disclosed

"a material departure from the terms of the original bonds"

and that..

"The exact point of cleavage (that is, between refunding bonds which could be issued without an election and those which could not) appears to be whether or not the amount of deferred interest must be posted in favor of the holders of old bonds when they are called in the manner provided".

It concluded that the bonds provided

"ground to jockey the bond situation and impose an undue hardship on the taxpayer by exacting the amount claimed. (A sum in excess of the par value of the bond). It further paves the way to violate Sec. 6, Art. IX by indirection".

The Supreme Court condemned the provisions because they indirectly violated the purpose of the Amendment. No such question was involved in the *Sullivan* case. In that case there was a single question of law. The question in this case was decided by the Florida Court on the facts.

Petitioners refer to *Columbia County vs. King*, 13 Fla. 451 (P. 23 Petition), and other Florida cases which they claim adopt the rule of *Gelpcke vs. Dubuque*, supra. But in all of those decisions (except *State ex rel Nuveen vs. Greer*, 88 Fla. 249, 102 So. 739,) the Court refused to reverse its earlier decisions.

If those opinions have any bearing on this case, it is because they show conclusively that the Florida Court has always refused to reverse decisions by it that have become a rule of property upon which parties had relied. That is the law of Florida. They sustain our contention that the Supreme Court of Florida did not reverse *Sullivan vs. Tampa*, supra, or any other decision.

In *State ex rel Nuveen vs. Greer*, supra, the Florida Court, after bonds had been issued, held that the statute under which the bonds had been issued was void, and pointed out that its decision was not inconsistent with *Columbia County vs. King*, supra, because it had not held the Statute valid before the bonds were issued. It would be improper for Federal Courts to impute to the Florida Supreme Court, despite these repeated assertions of a contrary policy, either a reversal or an intention to reverse *Sullivan vs. Tampa*. Since it has consistently refused to reverse in other instances and there is no word in its recent opinions that could be construed as evidence of an intention to reverse *Sullivan vs. Tampa*, Federal Courts should not assume an inconsistency.

Judge Sibley thought that the question of whether the Plaintiffs should, by the resolution authorizing the issuance of the bonds, be subrogated to a claim for additional in-

terest was not ruled upon by the Florida Court. If he is correct that fact does not raise a Federal question, nor a question of constitutional law; but a question of State law only,—a matter of the State policy as to its subdivisions. It is not a question of importance outside of Florida.

The opinion of the majority of the Circuit Court of Appeals that the Plaintiffs under the circumstances should seek relief in the Florida Courts, where the law of Florida is found, accords with all decisions of Federal Courts since *Eric vs. Tompkins*, 304 U. S. 64, and avoids the possibility of a conflict between State and Federal Courts as to the rights of parties under State law.

The scheme or plan of the 1933 refunding would have penalized the City for exercising its statutory right to redeem its bonds at par, by imposing a penalty for redemption despite the provisions of Sec. 3, Chap. 15772. Judge Sibley's opinion would result in compelling the City to pay a premium which the Florida Court has held it cannot pay.

If the express contract to pay a premium be void, how can a Court of Equity in the exercise of its conscience compel the payment of more than would be due under the contract if it were valid? Such a decision would place a 100 percent premium on illegality. Judge Sibley must have realized this, since he suggested that some other basis of equitable adjustment might be found. But he did not suggest another basis. There is nothing in any Florida case that would indicate that there is, or should be another basis.

The decision of this case should be controlled by the law of Florida. If that law is not "clear, stable and settled",

a Federal Court should not attempt to decide what it is. A Federal Court cannot grant relief to non-residents that a Florida Court has denied to a resident; especially where, as in this case, the Federal Court must first assume that the Florida Court has, contrary to its own long established rule, reversed an earlier decision, notwithstanding the fact that the Florida Court has not even indicated an intent so to do. Any decision other than that rendered by the Circuit Court of Appeals, would in effect impute to the Florida Supreme Court an act it did not intend, and give Petitioners rights that the Florida Court has held that a resident holder did not have.

Respectively submitted,

Attorneys for Respondents.

APPENDIX A

Section 3. Such resolution or resolutions shall determine the rate or rates of interest to be paid, not exceeding six per centum per annum, payable annually or at shorter intervals, and the maturity or maturities of the bonds which shall be at a time or times not exceeding sixty years from the date of the bonds, (except that in the issuance of bonds of taxing districts where the maturities are fixed under the Constitution, then such maturities shall be in accordance with the maturities fixed in the constitutional provision), as well as determine the medium of payment and the place or places in Florida or any other state at which the principal and interest shall be payable. *In the discretion of the governing body the right to redeem all or any of the bonds at par before maturity may be reserved upon terms and conditions to be fixed by resolution.* (Italics ours)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 42

W. J. MEREDITH, JAMES G. MARTIN and
A. R. OHMART,

Petitioners

VS.

THE CITY OF WINTER HAVEN, a
municipal corporation, et al.,

Respondents

BRIEF OF RESPONDENTS

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INDEX

	Page
RESTATEMENT OF THE CASE.....	1
QUESTIONS TO BE DECIDED.....	12
<p>Effect to be given by Federal Courts to the decisions of the Florida Court in the <i>Andrews</i>, <i>Outman</i>, <i>Taylor</i> and <i>School District</i> cases (also <i>State vs. New Smyrna Beach</i>, 149 Fla. 482, 4 So. 2d. 660, decided since the case was instituted.)</p> <p>The rights of Petitioners under Sec. 20 of the Resolution if the <i>Andrews</i> and other cases are the law of this Court.</p>	
FIRST QUESTION.....	13
A. <i>Andrews vs. Winter Haven</i>	13
B. <i>Sullivan vs. Tampa was not Reversed by Outman vs. Cone or by Andrews vs. Winter Haven</i>	13
C. <i>Gelpcke vs. Dubuque</i>	25
D. <i>Erie vs. Tompkins has Reversed Swift vs. Tyson, and Reinstated the Rule Followed Prior Thereto</i>	29
E. <i>Under the Erie Case, This Court Must Follow the Law of Florida as Announced by Its Supreme Court</i>	32
F. <i>No "Contract Exception" Recognized in Erie Case</i>	37
G. <i>Florida Court Has Not Discriminated Against Non-Resident Bondholders</i>	38
H. <i>No Reliance Alleged in Pleadings</i>	39
SECOND QUESTION.....	41
CONCLUSION.....	50

TABLE OF CASES

Page

12 Am. Jur. Sec. 210, p. 717.....	47
12 Am. Jur. Sec. 211, p. 718.....	47
Amer. United Ins. Co. vs. Avon Park, 311 U. S. 138.....	45
Andrews vs. Winter Haven, 148 Fla. 144, 3 So. (2d) 805, 2, 12, 13, 14, 21, 39, 40, 43, 50	
Anthony vs. Jasper Co., 101 U. S. 693.....	22
Bacon vs. Texas, 163 U. S. 267.....	27
B. & O. vs. Baugh, 149 U. S. 368.....	32
Bay County vs. State, 116 Fla. 656, 157 So. 1.....	17
Black & White Taxicab Co. vs. Brown and Yellow Taxicab, 276 U. S. 518.....	32, 35
Boykin vs. River Junction, 121 Fla. 902, 164 So. 558.....	17
Bradford County vs. Nuveen, 133 Fed. (2d) 169.....	45
Brash vs. State Tuberculosis Bd. 124 Fla. 167, 167 So. 827; 124 Fla. 654, 169 So. 218.....	17
Brevard County B. & L. Ass'n. vs. Sumrall, 101 Fla. 1189, 133 So. 888.....	49
Brinkerhoff Faris Trust Co. vs. Hill, 281 U. S. 673.....	28

	Page
Bristow Battery vs. Rogers County, 37 Fed. (2d) 504.....	28
Butz vs. Muscatine, 8 Wall. 575.....	32
Central Land Co. vs. Laidley, 159 U. S. 103.....	26, 27, 29
Columbia County vs. King, 13 Fla. 451.....	38
Continental Wall Paper Co. vs. Louis Voight & Sons, 212 U. S. 227.....	48
Cotten vs. Leon County, 6 Fla. 610.....	38
Cullen vs. S. A. L. Ry., 63 Fla. 122, 58 So. 182.....	49
Daly vs. James, 8 Wheat. 535.....	30
Davis vs. Dixon, 98 Fla. 87, 123 So. 536.....	16-18
Elmendorff vs. Taylor, 10 Wheat. 153.....	30
Erie vs. Tompkins, 304 U. S. 64.....	2, 29, 32, 33, 35, 37
Fahs vs. Kilgore, 136 Fla. 701, 187 So. 170.....	16
Fidelity Union Tr. Co. vs. Field, 311 U. S. 169.....	33, 34
Finley Method vs. Standard Asphalt, 104 Fla. 126, 139 So. 795.....	46
Gelpeke vs. Dubuque, 1 Wall. (U. S.) 375.....	2, 25, 26, 27, 29, 32, 34, 37, 38, 39

	Page
Gray vs. Moss, 115 Fla. 701, 156 So. 262.....	38
Green vs. Neal, 6 Pet. 291.....	30, 32
Great Northern R. R. Co. vs. Sunburst Oil Co., 287 U. S. 358.....	28, 29
Great Southern Hotel Co. vs. Jones, 193 U. S. 532.....	26
Hall vs. Coppel, 7 Wall. 542.....	47
Howell vs. State, 77 Fla. 119, 81 So. 287.....	23
Howey vs. Williams, 142 Fla. 415, 195 So. 181.....	44
Humphreys vs. State, 108 Fla. 92, 145 So. 858.....	38
Jackson vs. Chew, 12 Wheat. 153.....	30
Jefferson Co. vs. Hawkins, 23 Fla. 223, 2 So. 362.....	49
Kathleen Citrus Land Co. vs. Lakeland, 124 Fla. 659, 169 So. 356.....	15
Klemm vs. Davenport, 100 Fla. 627, 129 So. 904.....	38
Klemm vs. Winter Haven, 309 U. S. 638.....	28
Klemm vs. Winter Haven, 141 Fla. 60, 192 So. 652.....	8
Kuhn vs. Fairmont, 215 U. S. 349.....	32

	Page
Livingston vs. Moore, 7 Pet. 469.....	31
Miami, City of vs. State, 139 Fla. 598, 190 So. 774.....	15, 17, 20, 21, 39
McMullen vs. Hoffman, 174 U. S. 639.....	48
Miss. & Mo. R. R. Co. vs. McClure, 10 Wall. 511.....	26, 27
Motes vs. Putnam County, 143 Fla. 134, 196 So. 465.....	17
Northern Bank vs. Porter Twp., 110 U. S. 608.....	22
Ogden vs. Daviess Co., 102 U. S. 634.....	22
Outman vs. Cone, 141 Fla. 196, 192 So. 611.....	2, 12, 13, 14, 15, 18, 19, 21, 24, 39, 40, 43, 50
Patterson vs. Colorado, 205 U. S. 454.....	27
Patton vs. Easton, 1 Wheat. 476.....	30
Pierce vs. Isaac, 134 Fla. 666, 184 So. 509.....	17
Pine Grove vs. Talcott, 19 Wall. 676.....	26
Polk vs. Wendal, 9 Cr. 87.....	29
Powell vs. Harman, 2 Pet. 241.....	30

	Page
Russell vs. Todd,	
309 U. S. 280.....	33, 35
St. Johns Elec. Co. vs. St. Augustine,	
81 Fla. 588, 88 So. 387.....	49
State vs. Boring,	
121 Fla. 781, 164 So. 859.....	38
State ex rel Buckwalter vs. Lakeland,	
112 Fla. 200, 150 So. 508.....	38
State vs. Cedar Key,	
122 Fla. 454, 165 So. 672.....	38
State vs. Citrus Co.,	
116 Fla. 676, 157 So. 4.....	15, 16, 17
State vs. City New Smyrna Beach,	
148 Fla. 482, 4 So. (2d) 660.....	12, 50
State vs. City of St. Petersburg,	
106 Fla. 742, 144 So. 313.....	22
State vs. Ft. Myers,	
145 Fla. 135, 198 So. 814.....	18
State vs. Melbourne,	
135 Fla. 870, 185 So. 850.....	17
State vs. Sarasota,	
118 Fla. 629, 159 So. 797.....	22
State vs. Spec. Tax Sch. Dist.,	
107 Fla. 93, 144 So. 356.....	2, 12, 14, 19
State vs. Winter Haven,	
114 Fla. 199, 154 So. 700.....	7
Stewart vs. Stearns,	
56 Fla. 570, 48 So. 19.....	46
Stoner vs. N. Y. Life,	
311 U. S. 464.....	33

Sullivan vs. Tampa, 101 Fla. 298, 134 So. 211.....	2, 3, 14, 15, 16, 18, 20, 25, 38, 39, 40
Suwannee County vs. State, 147 Fla. 477, 2 So. (2d) 850.....	17
Swift vs. Tyson, 16 Pet. 1	26, 27, 28, 29, 31, 32, 33, 35, 36, 37, 49
Taylor vs. Williams, 142 Fla. 402, 195 So. 175.....	2, 12, 13, 14, 19, 40, 44, 45
Thatcher vs. Powell, 6 Wheat. 119.....	29
Tidal Oil vs. Flanagan, 263 U. S. 444.....	26, 29
Vandenbark vs. Owens Illinois Glass Co., 311 U. S. 538.....	34
Vero Beach, City of vs. Rittenoure Inv. Co., 113 Fed. (2d) 269.....	45
West vs. A. T. & T. Co., 311 U. S. 223.....	33, 34, 35
Wichita Royalty Co. vs. City Nat. Bank, 306 U. S. 103.....	33, 34
Winter Haven, City of vs. Eloise Groves Corp., 114 Fla. 93, 153 So. 92.....	8
Winter Haven, City of vs. State, 114 Fla. 527, 154 So. 879.....	7
Winter Haven, City of, vs. Summerlin, 114 Fla. 727, 154 So. 863.....	8
Sec. 687.04 Florida Statutes 1941.....	10
Sec. 6872(6) C. G. L. 1927.....	10

IN THE
Supreme Court of the United States

OCTOBER TERM, 1943

No. 42

W. J. MEREDITH, JAMES G. MARTIN and
A. R. OHMART,

Petitioners,

vs.

THE CITY OF WINTER HAVEN, a
municipal corporation, et al.,

Respondents

BRIEF OF RESPONDENTS

Petitioners, holders of bonds of the City of Winter Haven, brought this suit against the City for a Declaratory Judgment and an Injunction to make that Judgment effective. The District Court dismissed the Complaint without opinion (p. 100 Tr.). The Circuit Court of Appeals held that the dismissal should be without prejudice to Petitioners' right to institute a suit in the State Court to obtain a determination of their rights, 134 Fed. (2d) 202.

Restatement of the Case

Because Petitioners' "Statement of the Case" omits many important facts and rests upon premises not supported by allegations in the Complaint, a restatement is necessary.

The primary object of the complaint is a declaration that certain provisions of Petitioners' bonds are valid. Another bondholder of the City in 1941, one Andrews, instituted a suit in the State Court to obtain a declaration of the validity of the same provisions of other bonds of the same issue as those of Petitioners. The Florida Supreme Court held that they were unenforceable, could be severed from the other provisions of the bonds, that the bonds could be called by the City at par plus accrued interest to date of redemption, and dismissed the suit. *Andrews vs. Winter Haven* 148 Fla. 144, 3 So. (2d) 805. The decision cites and approves earlier decisions by that Court, *Outman vs. Cone*, 141 Fla. 196, 192 So. 611, *Taylor vs. Williams*, 142 Fla. 402, 195 So. 175. See also *State vs. Special Tax School Dist.*, 107 Fla. 93, 144 So. 356.

Petitioners admit that if the Federal Court must follow these decisions, their prayer must be denied. But they say that since these decisions were rendered after the bonds were issued, this case should be decided in accordance with *Sullivan vs. Tampa*, 101 Fla. 298, 134 So. 211, a case decided by the Florida Court before their bonds were issued, because of a so-called "principle of reliance" or "contract exception" recognized by this Court in *Gelpcke vs. Dubuque*, 1 Wall. (U. S.) 175, 17 L. ed. 520, which they say has not been reversed by *Erie vs. Tompkins*, 304 U. S. 64, 82 L. ed. 1188, or by any case subsequent thereto. Petitioners have not alleged that they knew of the opinion in *Sullivan vs. Tampa*, supra, or that they relied upon it, or that they acquired their bonds before the Florida Court decided the *Outman* and other cases.

Since decision of this case requires a construction of Chap. 15772 Laws of Florida, 1931, and of Sec. 6, Art. IX of the Constitution of Florida and their effect upon the bond contract; this Court should follow the decision of the

Florida Court in *Andrews vs. Winter Haven*, supra, which involved the identical issue:

Sec. 6, Art. IX of the Constitution of Florida was amended in 1930 after the collapse of the Florida real estate boom, and as amended, reads as follows:

"The Legislature shall have power to provide for issuing State bonds only for the purpose of repelling invasion or suppressing insurrection, and the counties, districts or municipalities of the State of Florida shall have power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such counties, districts, or municipalities shall participate, to be held in the manner to be prescribed by law, but the provisions of this law shall not apply to the refunding of bonds issued exclusively for the purpose of refunding of the bonds or the interest thereon of such counties, districts or municipalities."

The reasons for the adoption of the amendment and the purposes of the amendment were stated by the Florida Court in *Sullivan vs. Tampa*, supra, as follows:

"It is a matter of common knowledge in this State that prior to the adoption of the amendment, and especially during the boom period marking the years 1924 to 1926, the counties, districts and municipalities of the state had issued bonds, notes, and other obligations involving hundreds of millions of dollars; that the issuance of a large part of these obligations had been authorized without a vote of the people, or in many cases, when a vote had been had a very small portion of the voters had actually participated in the election. After the collapse of the boom and the return to a more sane condition of the public mind there arose a strong sentiment among our people that no further bonded

indebtedness should be issued or incurred *without first securing the approval of a majority of the votes of the people upon whom the burden would fall. But existence of the large amount of outstanding obligations, many of which had matured, or were about to mature, rendered it necessary that some provision should be made which would authorize the refunding of these existing and maturing obligations without the expense and delay of preliminary election, otherwise immediate defaults would in many cases have occurred before the machinery for holding an election could have been put in motion and its function completed. Such conditions must have been in the minds of the framers in proposing, and of the people in adopting, such amendment. May it not be said that the intent of the people was to prevent further abuse of the power to issue new and additional obligations, while at the same time facilitating the refunding of existing obligations already outstanding? Such obligations were not to be repudiated; they had to be paid or refunded. While the main evil sought to be prevented or remedied by the amendment was the further increase of the bonded indebtedness of the several counties, municipalities, and districts of the state except upon the authority of the people expressed in an election, it was also necessary that provision be made for authorizing the refunding of existing obligations, and even 'the interest thereon.'*

The greatest increase in Florida municipal debt occurred in cities of the peninsula section of the State. The City of Winter Haven was no exception. With a population of 7130 in 1930, its total debt in 1931 exceeded two million dollars,—nearly \$300. per capita against a national average of less than \$80. per capita for cities of less than 100,000 population. The annual interest rates upon its debt were 6% and 5½% (pp. 50-57 and 64-65) amounting to nearly \$120,000 per year. \$150,000. to \$200,000. of principal was maturing each year. Prior to 1931, the City had been able

to pay its interest, but met its maturing bonds after 1927 only by the issue of "Capital Fund", "Funding" and "Refunding" bonds totaling over \$1,000,000. (the schedules of bonds outstanding in 1933 (pp. 28-49 Tr.) show that the number of bonds of the original issues that had been retired was substantially equal to the amount of such bonds issued after 1927).

In 1931, the City defaulted in payment of interest and also on its maturing bonds. By 1933, unpaid interest and principal amounted to nearly \$600,000. Another \$227,000 principal would mature in 1934. (pp. 29 to 49 Tr.) Only those who lived in Florida during the era of municipal defaults can realize the effect of such a general default upon local government and upon taxpayers.

In May 1933, R. E. Crummer and G. W. Simons submitted to the City a proposal to refund the entire debt of the City (pp. 119-135 Tr.)—past due bonds not only, but also bonds not due, and all past due interest—into new refunding bonds of two series to be exchanged for the outstanding debt. Their proposal was accepted by the City. The contract was similar to the one between R. E. Crummer & Company and Lake County, which the Florida Court held void in *Faylor vs. Williams*, supra; and to that of Nuveen & Company with Bradford County, which the Fifth Circuit Court of Appeals held void in 133 Fed. (2d) 169. Petitioners claim to be the owners of bonds issued under that void agreement.

Bonds of Series A were exchanged for bonds bearing 6%; bonds of Series B, for bonds bearing 5½%. The rate of interest on all new bonds was fixed at 3½% for two years, 4% for one year, 4½% for one year, and 5% for six years; after which Series A would return to 6% until maturity, and Series B to 5½%.

The bonds provided that if they

"shall not have been called and retired as hereinafter

~~provided prior to maturity the full interest at the rate of six percent per annum less the amount theretofore paid from the date hereof to said maturity date shall also at that time be enforceable, collectible and paid upon presentation and surrender of said bond.~~

Sees. 2 and 7 of the Resolution (pp. 50 and 66 Tr.) authorizing issue of the bonds repeat this in slightly different phraseology:

"If any of said bonds shall not have been called and retired as hereinafter provided prior to maturity full interest at the rate of 6 percent (or 5½ percent) per annum less the interest theretofore paid in accordance with such interest coupons, shall also on such maturity date be enforceable, collectible and paid upon presentation of said bonds as hereinafter provided, which said deferred interest shall be represented by a non-interest bearing non-detachable certificate or coupon attached to each of said bonds."

The wording of the non-detachable deferred interest certificate is as follows:

"No.....

\$.....

On the first day of 19....., the City of Winter Haven, Polk County, Florida, will pay to bearer at the Central Hanover Bank and Trust Company of New York City, in the City of New York, New York, the sum of Dollars, being the *then enforceable, collectible and deferred interest* on its City of Winter Haven General Refunding Bond Issue of

1933, Series "A" Dated April 1, 1933 No.....

*unless said bond shall have been heretofore called
for redemption.*

.....
Mayor Commissioner City of
Winter Haven, Florida.

.....
City Auditor and Clerk
City of Winter Haven, Fla."

The face amount of the "deferred interest certificate" attached to each \$1,000. bond of Series A is \$145.00; of Series B, \$95.00. No bonds of either series will mature until 1948, after which they mature serially through 1963; hence the deferred interest would not become due until the bonds are due.

The City contracted to make annual tax levies of not less than \$105,000. to \$120,000. per year (p. 125 Tr.) but in fixing the millage after the first year, it would assume that collection for the next year would be at the rate of the previous year and it would adjust the millage accordingly. From the sixth to the tenth year (1939 to 1943) the City agreed to also add to the annual levy an amount equal to one-fifth of the taxes it had failed to collect during the preceding five years. No reductions could be made in the annual tax levies until a part of the principal had been retired nor until after five years had elapsed. The contract (p. 126) anticipated heavy retirements during the first four years; but no reduction occurred, probably because of the litigation that followed the refunding.

See *State vs. Winter Haven*, 114 Fla. 199, 154 So. 700.

City of Winter Haven vs. State, 114 Fla. 527, 154 So. 879.

8

City of Winter Haven vs. Eloise Groves Corp. 114
Fla. 93, 153 So. 92,

City of Winter Haven vs. Summerlin, 114 Fla. 727,
154 So. 863, which was not settled until the de-
cision of this Court in 1940.

Klemm & Sons vs. City of Winter Haven, 141 Fla.
60, 192 So. 652

So that the principal of the City's debt in 1940 was the same that it was in 1933. The bonds at that time were bearing interest at 5 percent; the rate would increase in 1943 to 6 percent on Series A and $5\frac{1}{2}$ percent on Series B. In 1940, the City negotiated a new refunding contract (Ex. B p. 134 Tr.) which would permanently reduce interest on all of its bonds to 4 percent for the first maturing one-third of new refunding bonds, $4\frac{1}{4}$ percent for the second maturing one-third, and $4\frac{1}{2}$ percent for the last maturing one-third and called its old bonds for payment April 1, 1943. Maturities of the new refunding bonds were to be arranged so that the maximum tax levy for any year would not exceed \$126,000. The new bonds were to be exchanged for the 1933 bonds, but the agents agreed to purchase for cash, at par, enough bonds to redeem all bonds not exchanged within 18 months.

The bonds of 1933 and the Resolution authorizing their issue, (Sec. 11 pp. 72-4 Tr.) also provided that

"All of said General Refunding bonds, Series A, shall be callable as hereinafter set out, upon any interest payment date, according to the following schedule: On or prior to April 1, 1943, at par, accrued interest at the rate then prevailing as enforceable and collectible, plus one half of the deferred interest for the period of ten years, such one-half of said deferred in-

terest being \$72.50 on each \$1,000. bond, or at the same rate on bonds of smaller denomination."

After 1943, plus \$108.75 per \$1,000. bond; after 1953, plus \$145.00 per \$1,000 bond.

A similar provision fixed the sum to be paid to the holders of Series B at \$47.50 during the first ten years. The amount of the premium would increase in 1943 and again in 1953 as with Series A.

The following table shows in dollars and cents the result of giving effect to the provision of bonds of Series A if they were called during the first ten years:

If bonds were called	City would have paid in- terest coupons aggregating	Plus ½ of de- ferred and in- terest* certifi- cate	or A Total of
Apr. 1, 1934	\$ 35.00	\$72.50	\$107.50
" " 1935	70.00	72.50	142.50
" " 1936	110.00	72.50	182.50
" " 1937	155.00	72.50	227.50
" " 1938	205.00	72.50	277.50
" " 1939	255.00	72.50	327.50
" " 1940	305.00	72.50	377.50
" " 1941	355.00	72.50	427.50
" " 1942	405.00	72.50	477.50
" " 1943	455.00	72.50	527.50

Series B differs only in that the additional amount was \$47.50.

These amounts of \$72.50 and \$47.50 to be paid in addition to interest were premiums to be paid for redemption. Petitioners themselves say so (p. 4 of Petition).

The amount of these premiums was constant for the first ten years; increased at the end of the eleventh year and again at the end of the twentieth year. At maturity the deferred interest certificates would come due with the bonds.

This provision of the bonds is found only in Sec. 11 of the Resolution, which contains only the terms of call. Secs. 2 and 7 of the Resolution fix the rates of interest to be paid.

The sums to be paid in addition to interest cannot be regarded as interest on the bonds, otherwise the result would be incongruous. For example: The amount to be paid if the bonds of Series A were called at the end of the first year would, if added to the interest represented by coupons, have been the equivalent of interest at the rate of $10\frac{3}{4}$ percent, and the maximum rate of interest allowed by the law of Florida is 10 percent.

Sec. 687.04 Florida Statutes, 1941

Sec. 6872(6) C. G. L. 1927

The amount to be paid by the City if it called the bonds of Series A at the end of the second year (1935) would if added to the coupon rate have been the equivalent of interest at the rate of $7\frac{1}{2}$ percent; at the end of the third year, $6\frac{1}{2}$ percent. Stated differently, the total amount to be paid at the end of the first year would exceed 6 percent (the rate on the old bonds) by \$47.50 per thousand; or \$95,000 on Series A. Not until the fourth year would the premium plus the coupon interest be less than the interest on the old bonds.

\$375,000 bonds were already past due, \$227,000 additional would mature in the calendar year 1934. All of these were payable at par. The City thus agreed to pay \$33,000 merely for the privilege of redeeming new bonds issued in exchange for these bonds otherwise redeemable at par.

Petitioners also say that if this Court deny their right

to collect this premium, they are then entitled to collect "the full amount of interest which would have been due to the holders of a like amount of indebtedness represented by the original bonds" (6 percent on Series A and 5½ percent on Series B) from 1933 to 1943 less the interest that has been paid by the City and represented by coupons that have matured, because of the provision of Sec. 20 of the Resolution, authorizing the bonds which was as follows:

"That if any clause, section, paragraph or provision of this resolution or of the General Refunding Bonds hereby authorized be declared unenforceable by any Court of final jurisdiction, it shall not affect or invalidate any remainder thereof, and if any of the bonds hereby authorized be adjudged illegal or unenforceable in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment".

The following table shows what the City would now be required to pay on Series A under the claim of the full 6 percent from date of the bonds until April 1, 1943.

Interest already paid by City on matured coupons.

2 yrs. @ 3½%	\$ 70.00	
1 " " 4%	40.00	
1 " " 4½%	45.00	
6 " " 5%	300.00	\$455.00

Additional amount claimed by Plaintiffs \$145.00

This is twice the amount per bond Petitioners claim to be entitled to demand under the premium clause of the bonds. \$72.50 per bond on Series A would amount to \$145,000; \$145.00 per bond would amount to \$290,000. It is the amount which, according to the "deferred interest coupons", would not be due until the maturities of the bonds.

The City paid the "Agency" a fee of \$35,100. for its services under the illegal contract. Petitioners' Ex. B (p. 86 Tr.) says that this amount "was added to the debt of the City". The Complaint does not negative this allegation of the Exhibit, and it must be assumed to be a fact. Its truth was admitted in the State Court, (p. 150 Tr.).

The Refunding Agents of the City were creditors of the City and represented creditors (See Ex. A, p. 119 Tr.). The Plan for refinancing was prepared by them. The "Refunding Agency" composed of "three or more substantial individual creditors" was given exclusive authority to act in carrying out the refinancing plan for a period of five years, and for such further time as necessary to complete it.

Control of the refunding by the Agency was assured by Sec. 14 of the Resolution (p. 132 Tr.). Caldwell & Raymond of New York City, or Chapman & Cutler of Chicago, both recognized as expert bond counsel, the City Attorney and a Florida counsel were to be employed by the Agency, which agreed to pay the fees of all counsel (including the City Attorney) and all expenses. The creditors thus demanded and received an unconditional surrender of the City and dictated the terms of peace.

QUESTIONS TO BE DECIDED

Argument of the case divides itself into consideration First, of the effect to be given by Federal Courts to the decisions of the Florida Court in the *Andrews*, *Outsian*, *Taylor* and *School District* cases (also *State vs. New Smyrna Beach*, 148 Fla. 482, 4 So. 2d. 660, decided since the case was instituted);

Second, the rights of Petitioners under Sec. 20 of the Resolution if the *Andrews* and others cases are the law of this Court.

First Question

A. *Andrews vs. Winter Haven*

The Florida Supreme Court in *Andrews vs. Winter Haven, etc.*, held unenforceable the agreement to pay a premium if the bonds are called. That question was posed by Plaintiffs in that case and the opinion of the Court answered it. The Court said

"In answer to question one on authority of *Outman vs. Cone*, 141 Fla. 196, 192 So. 611 and *Taylor vs. Williams*, 142 Fla. 402, 195 So. 175; *Id.*, 142 Fla. 562, 195 So. 184, we are impelled to hold the deferred interest coupons void and non-enforceable but that they may be covered from other provisions of the refunding bonds which may then be called under the terms of the contract."

It is unnecessary to discuss at length the amendment to the Complaint criticizing the proceedings in *Andrews vs. Winter Haven* (pp. 102-3). Petitioners carefully avoid alleging that the Florida Supreme Court knew of or was influenced by the facts alleged. They do not charge that the Court was a party to a "made case" or with bad faith. Nor is it necessary to cite authority to show that Petitioners' remedy to correct an unjust or collusive decree of the Florida Court is by a proceeding in the Florida Court, to have it correct its own error. This Court is not a Court to review errors of a State Court and this proceeding cannot be utilized as an Appeal from a decision of the Florida Court. This suit was brought in the Federal Court. A judgment of the Florida Court cannot be attacked in a Federal Court on the ground that it was not fairly and honestly rendered and is not State law, unless the judgment of the State Court violates the Federal constitution. There is no claim made here that a constitutional right has been violated.

Petitioners admit that even before the decision in the *Andrews* case, the Florida Court in *Outman*, *School District* and *Taylor* cases had decided the same question of law. In the *Andrews* case, therefore, the Circuit Judge, consistent with his duty could not have ruled otherwise than he did; nor could the Supreme Court itself have decided otherwise without reversing the precedents it had established. The good faith of those decisions and the judgment of the Florida Court has been reaffirmed by it in the *New Smyrna Beach* case, supra, decided since this suit was instituted. This Court should ignore the patent attempt to impliedly impugn the honesty and discretion of the Florida Court.

B. *Sullivan vs. Tampa* was not Reversed by *Outman vs. Cone* or by *Andrews vs. Winter Haven*.

Since the case of Petitioners rests upon the claim that the decisions in the *Andrews*, *Outman* and other cases have reversed the *Sullivan* case, our primary inquiry must be whether that claim has any foundation. We assert that *Andrews*, *Outman* and other cases not only did not reverse *Sullivan vs. Tampa*, but are consistent with that decision.

The bonds of Tampa were issued under Chap. 11855, Laws of 1927. The amendment to Sec. 6, Art. IX was adopted in 1930. *Sullivan vs. Tampa* was decided in 1931. The bonds in that case were to be sold, not exchanged; they carried no "deferred interest certificates"; contained no provisions for call or redemption or for the payment of a premium as a condition thereto. No void refunding contract existed and no fee had been paid to a fiscal agent. All the Court held was that since Sec. 6, Art. IX contained no express limitation on the rate of interest that refunding bonds "should bear", the Court would imply none. But in its opinion we find a statement that plainly indicated the construction the Court has ever since given to Sec. 6, Art. IX. It said:

"It is quite probable that the difference between the amount which may be realized from the sale of the refunding bonds and the amount of the original obligations which are to be refunded *must be paid out of the general funds of the city, but if this is done it will not increase the bonded debt of the city.*"

The debt of the City cannot be increased by refunding without approval at an election.

Petitioners ignore that statement when they erroneously assert (p. 9 of Petition)

"In that case (*Outman vs. Cone*, 141 Fla. 196, 192 So. 611) the Florida Court did what in the *Sullivan* case it had held it could not do, namely, it read into the constitutional amendment by implication, a provision to the effect that a refunding bond not authorized at a freeholder election must bear a lower rate of interest than the bond refunded."

The case did not so hold nor was that question ever raised. On the contrary, the *Outman* and other cases merely apply the principle implied in the quoted statement from *Sullivan vs. Tampa*. In *City of Miami vs. State*, 139 Fla. 598, 190 So. 774, the Court said that the City could not

"directly, indirectly or in any way increase the bonded indebtedness";

In *Kathleen Citrus Land Co. vs. Lakeland*, 124 Fla. 659, 169 So. 356 it said that the Constitution prohibited new indebtedness which

"in whole or in part, directly or indirectly presently or potentially"

would compel the levy of more taxes; in *State vs. Citrus Co.*, 116 Fla. 676, 157 So. 4, (quoted by the Court from its opinion

in *Fahs vs. Kilgore*, 136 Fla. 701, 187 So. 170) it said that the

"limitation of Sec. 6, Art. IX on the creation of new obligations is absolute",

and that the Court had applied that limitation,

"to every form of proposed contractual device intended as a future obligation of the taxing power, directly or indirectly undertaken regardless of form."

All of these statements are consistent with the decision of the Florida Court in *Davis vs. Dixon*, 98 Fla. 87, 123 So. 536 in 1928 long before Sec. 6, Art. IX was amended. There the Court held that the

"postulate of the general rule as to the issuance of refunding bonds without a new election is that such bonds merely evidence an extension of existing indebtedness."

(*Davis vs. Dixon*, supra, is quoted and followed in *Sullivan vs. Tampa*, supra).

This principle has been literally followed by the Court in determining the meaning of "refunding bonds" in the amendment to Sec. 6.

In *State vs. Citrus County*, supra, it said that authority to issue refunding bonds

"is limited to a mere authorized extension of the old obligations of the contract to the new bonds when the latter purport to be issued exclusively for the purpose of refunding the old bonds or interest thereon."

Though the Court had held that obligations payable solely from revenues of a utility did not require an election, it held that if the city gave a mortgage on its utility as

additional security, the pledge was void, unless first approved at an election. *Boykin vs. River Junction*, 121 Fla. 902, 164 So. 558; *State vs. Melbourne*, 135 Fla. 870, 185 So. 850.

In *Brash vs. State Tuberculosis Board*, 124 Fla. 167, 167 So. 827; it first disapproved revenue bonds issued by that Board for the same reason. In 124 Fla. 652, 169 So. 218 it approved the bonds when that clause was eliminated.

In *State vs. Citrus County*, supra, and *Bay County vs. State*, 116 Fla. 456, 157 So. 1, additional revenue had been pledged to secure refunding bonds. The Court held that this could not be done without approval by the taxpayers at an election.

In *Pierce vs. Isaac*, 134 Fla. 666, 184 So. 669, it refused to permit the District to pay refunding expenses and fees out of sinking funds, because that would result in increasing the debt without an election.

In *Motes vs. Putnam County*, 143 Fla. 134, 196 So. 465, and *Suwannee County vs. State*, 147 Fla. 477, 2 So. (2d) 850, it held that the sinking fund must be used to pay bonds; that the amount of refunding bonds issued without an election could not exceed the amount of the outstanding debt less the amount in the sinking fund.

In *Miami vs. State*, supra, the Court drew the dividing line and directly contradicts the premise of Petitioners when it said that

"duly authorized and legally reasonable expenses incurred in the process of refunding may be paid by the unit as a current expense; but the amount of no part of such expense should be directly or indirectly in any form or manner added to the bonded or continuing indebtedness of the unit unless it is duly approved by the vote required by Sec. 6, Art. IX of the Constitution as amended in 1930.

The law does not contemplate that unmatured though callable bonds shall be refunded at large expense unless the tax burden pledged to pay the bonds shall thereby be materially lightened by postponing payments of principal, by substantial reduction in interest rates or otherwise be financially and economically beneficial in a substantial degree to the general welfare of the taxpayers and citizens of the particular governmental or taxing unit,"

and added

"Nothing is permissible, whether statutory or otherwise that will directly, indirectly or in any way exceed the debt limit, or that will in any way increase the bonded indebtedness of the unit without the required electorate approval."

These statements are not only contrary to Petitioners' premise but are a mere repetition of *Sullivan vs. Tampa*.

In *State vs. Fort Myers*, 145 Fla. 135, 198 So. 814, the Court again drew the line when it validated refunding bonds because the city had not contracted to levy taxes to pay a fee to the fiscal agent in addition to the principal and interest on the bonds. The fee was paid out of surplus.

So in *Outman vs. Cone*, supra, the Court merely restated the "postulate" for the issue of refunding bonds without an election which it had announced in *Davis vs. Dixon*, supra, before the amendment was adopted,—that if anything more than an extension of the original obligation be attempted, the bonds must be approved by freeholders as required by Sec. 6, Art. IX. It did not refer to *Sullivan vs. Tampa* and did not reverse it. It held that the refunding bonds in the *Outman* case

"disclose a material departure from the terms of the original bonds."

because the provisions for payment of a portion of the "deferred interest certificates" in the event of call, *leave ground to jockey* the bond situation and impose an undue hardship on the taxpayer (who otherwise would have been entitled to vote) by exacting the amount claimed. (The table on p. 9 of this brief shows how the debt was "jockeyed"). It paves the way to violate Sec. 6, Art. IX by indirection.

"The exact point of cleavage (that is between bonds that must be approved by freeholders and those that need not) appears to be whether or not the *amount of deferred interest must be* posted (that is, credited) in favor of the holder of the old bonds when they are called in the manner provided."

The bonds being then outstanding the Court did not hold them void, but held that the agreement to pay "deferred interest certificates" as a condition to call was not enforceable, was severable; and that the County could call the bonds at par plus accrued interest.

State vs. Special Tax School District, supra, cited the *Outman* case and said that

"There is no authority for enforcing deferred interest coupons if the outstanding bonds are called prior to October 1, 1942."

See also Taylor vs. Williams, supra.

It was not until after these decisions that Andrews filed his suit in the State Court against Winter Haven. The Court cited the *Outman* and *School District* decisions and again held that the "deferred interest coupons" were unenforceable, could be severed and that the bond

"may then be called under the terms of contract."

But Winter Haven obligated itself to pay a portion of the "deferred interest certificate" as a premium for the redemption of its bonds before maturity. Petitioners themselves say so (Petition, p. 4). The earlier the call, the larger the premium to be paid. For the first three years the premium added to the interest would even exceed the interest on the old bonds at the original rates of 5½ percent and 6 percent.

The City also paid the bondholders or their representatives a fee of \$35,100, and increased its indebtedness by that amount. It even obligated itself to pay a premium of over \$30,000, for what Petitioners call "the privilege" of redeeming within one year bonds issued to refund bonds that were past due or that would mature in one year.

The opinion in *Miami vs. State*, supra, quoted (p. 17 of this brief) referring to *Sullivan vs. Tampa*, supra, which had been cited by the State said

"The essential facts there (in the *Sullivan* case) were different (from those in *Miami*)."

It thereby drew the distinction which it had previously drawn. So here, the essential facts are different from those in the *Sullivan* case.

To those familiar with the debt problem of Florida municipalities, the decisions of the Florida Court are consistent in logic and result, and with the purpose of the amendment to Sec. 6, Art. IX. Any seeming inconsistency in phraseology becomes clear when we consider the facts of the cases. In all of them the Court gave effect to the purpose of the absolute limitation or prohibition of the amendment, against an

increase in debt without an election and at the same time preserved the privilege of the proviso in accord with the purposes of the amendment as it interpreted it in *Sullivan vs. Tampa*.

The Florida Court could have grounded its decisions in the *Outman, Andrews* and other cases upon the express language of Chap. 15772, Laws of 1931. That Act was passed to make effective the proviso of Sec. 6, Art. IX adopted in 1930. It was passed at the first succeeding session, and is a legislative interpretation of the amendment. At the same session, provision was also made for holding elections when required by the amendment. Sec. 3 of Chap. 15772 granted the City authority to include in the refunding resolution an agreement to redeem the bonds at par as follows:

"In the discretion of the governing body the right to redeem all or any of the bonds at par before maturity may be reserved upon terms and conditions to be fixed by resolution."

That Act did not contain authority for the city to pay a premium. Petitioners' bonds were issued under the authority of that Act. (see form of bond, p. 64-Tr.) The City, therefore, had no legal power to contract to pay any premium for the right to redeem.

Chap. 15772 did give the City power to include numerous provisions, but Petitioners misstate the Act when they say redemption could be on any terms fixed by the City.

We are not concerned here with the wisdom of this limitation upon the power of the City, nor with whether the agreement was a good business deal for the City. If we were,

the table would show the contrary. Every person dealing with the City took notice of the existence and terms of the law under which the power to issue bonds is claimed. That power was derived exclusively from legislative authority, and the laws which conferred that power entered into and formed a part of the bonds themselves as if included therein. A holder of bonds is charged with notice of the provisions of those laws. *Anthony vs. Jasper Co.* 101 U. S. 693, *Northern Bank vs. Porter Twp.* 110 U. S. 608; *State vs. St. Petersburg*, 144 So. 313, 106 Fla. 742, *Ogden vs. Daviess Co.* 102 U. S. 634.

On page 10 of their brief Petitioners say that the *Sullivan* case is inconsistent with *State vs. Sarasota* 118 Fla. 629, 159 So. 797, and that the Court in the latter case held that refunding bonds might be issued without an election providing for the payment of deferred interest to the full amount of the interest rate borne by the bonds being refunded as a consideration to the refunding bond takers for accepting a callable bond in lieu of original bond which was non-callable. But in that case the bond expressly reserved the right to call the same at par and accrued interest at the rate "then prevailing as enforceable and callable". Payment of the difference between the coupon rate of the refunding bond and the rate of the original bonds that were refunded was not to be made until maturity. The Court's opinion expressly pointed out that

"the right of recoupment * * * is contingent only. It cannot attach during any of the time that the bonds are subject to call before maturity, as these proposed refunding bonds are. * * * Only in the event that none

of these contingencies shall occur, is it to become an operative condition of the proposed refunding bonds that the reserve differential of 10% due on what would otherwise be a total loss in interest for the life of the bonds as between the old interest rate and the new shall, on October 1, 1957 * * * become payable by recoupment for interest deferred and uncalled during the contract period."

Petitioners also say that the agreement of Winter Haven to pay a premium in the event of the call of the Winter Haven Bonds before maturity was rendered valid by the fact that the holders of the old bonds accepted new bonds carrying a temporary reduction in interest. But since the city had no power by law to contract to pay a premium for redemption, even the existence of a valuable consideration could not give validity to an agreement to pay a premium. Either the city had the power to contract to pay a premium or it did not. If it did not, the agreement is void.

On page 28 of their brief petitioners quote section 3 of Chap. 15772 under which these bonds were issued, but fail to give effect to the meaning of that clause. They have italicized the word "upon". They should have italicized the words "at par before maturity". The privilege of reserving the right to redeem is limited to redeeming bonds "at par before maturity". The granting of this power is therefore limited, and the City had no power to agree to pay more than par in the event it redeemed the bonds before maturity. A granting of power to public officers is construed as mandatory and not directory unless an intention to the contrary is indicated.

In *Howell vs. State*, 77 Fla. 119, 81 So. 287, the Florida Court held that permissive words

"are peremptory when used to clothe a public officer with power to do an act which * * * concerns the public interest, or the rights of third persons."

The general rule is found in *Southerland* which is referred to in the opinion, and also in *Endlich on Interpretation of Statutes*, Sec. 533 and 59 C. J. Secs. 631, 632, 633. This is not merely a technical distinction, but is necessary because of the provisions of Sec. 6, Art. IX. If the City could redeem its bonds at a price in excess of par as it might determine, the result would be to increase the indebtedness of the city automatically when the bonds were called at the premium despite the absolute prohibition of the amendment, for the premium would then "be posted" as the Court said in the *Outman* opinion, and would become a part of the obligation payable on the call.

The amount of the premium to be paid is not material; nor can the prohibition of the constitution be evaded by fixing the premium as a percent of a stated interest coupon rather than as a percent of par, or as a stated sum of money. The result is the same—an increase in debt. The Legislature so construed the amendment. The Florida Court in its opinions dealt with the amendment itself and its purpose, and gave it the same construction.

It says that it has condemned every plan for refunding that would have the effect of directly or indirectly producing the prohibited result.

The argument of Petitioners shows how the bondholders attempted to "jockey the debt" of the city to their advantage, thereby bringing the provisions of the bonds for payment of a premium within the exact language of the *Outman* case. The Florida Court has drawn the "line of cleavage" between bonds that may be issued without an election and those that may not. The Winter Haven bonds if holds could not have been issued without an election but, having been

issued, they are valid except for the provision which violates the policy of the State as fixed by the Court to prevent indirect violations of Sec. 6, Art. IX. The distinction is clear when the facts are understood and considered in connection with the intent and purpose of that amendment.

C. Gelpcke vs. Dubuque

Petitioners say that in *Gelpcke vs. Dubuque* this Court established a "principle" of law which the Florida Court has followed, and that later decisions of the Florida Court should be ignored in this case because they reverse *Sullivan vs. Tampa*. But *Gelpcke vs. Dubuque* did not announce a new principle; it is only a decision of that case. The only reason given by the Court for refusing to follow the later decision of the Iowa Court was that

"the earlier Iowa cases (which were to the contrary) were sustained by reason and authority and were in harmony with the adjudication of sixteen states of the Union;"

that the later cases

"can have no effect upon the past;"

because

"where there is a change of judicial decision as to the constitutional power of the legislature it can have no effect upon the past."

But the opinion does not give any reason why the Federal Court could refuse to follow the decision of the State Court construing its own Constitution. It simply refused to follow it.

Justice Miller's dissenting opinion pointed out that the decision was contrary to the earlier decisions of this Court.

In other cases decided about the same time (cited in Petitioners' Brief p. 37) the Court simply said that the question had been decided in *Gelpcke vs. Dubuque*. But in *Pine Grove vs. Talcott*, 19 Wall 666 decided in 1874, the Court realized its inconsistency and gave as its reason for refusing to follow the rule of the State Court, that Sec. 10, Art. I of the Federal Constitution forbids a state from impairing the obligation of a contract by law and that

"impairment could not be accomplished by judicial decision."

This statement was without precedent and has not been followed. The Court has always held the contrary in cases appealed to it from State Courts and later gave a different reason.

In *Central Land Co. vs. Laidley*, 159 U. S. 103 (decided 1895) it receded from its error in *Pine Grove vs. Talcott* and said that *Gelpcke* and other cases were decided under the rule of *Swift vs. Tyson*. 16 Pet. 1 State Court's decisions had not been followed because those cases had originated in Federal Courts and involved questions of "commercial" and "general law", which Federal Courts were free to decide. The Court expressly held that it *would not have had jurisdiction* if those cases had reached it by appeals from State Courts; it compared *Gelpcke vs. Dubuque* with *Miss. & Mo. RR vs. McClure* 10 Wall 511, an illustration of the difference between the two types of cases.

Great Southern Hotel Co. vs. Jones, 193 U. S. 532, affirmed *Central Land Co. vs. Laidley* and again stressed the fact that *Gelpcke* and other cases had originated in Federal Courts. In *Tidal Oil vs. Flanagan*, 263 U. S. 444, Taft C. J. segregated decisions involving this question into groups to show the Court had always been consistent. He said that this Court had refused to follow State Courts

because under *Swift vs. Tyson* it was free to decide according to rules of "general" or "commercial law", and added that

"Certain unguarded language in *Gelpcke* and in some other cases had caused confusion although these cases did not really involve the contract impairment clause of the Constitution."

Petitioners themselves do not contend to the contrary.

Thus it appears that ever since the *Laidley* case this Court has been committed to the theory that the *Gelpcke* and other cases represent an extension of the rule of *Swift vs. Tyson*.

The *Gelpcke* case did say that reversal by a Court of an earlier decision could not affect the rights of persons who had relied upon the earlier one. It does not follow that this Court can reverse for that reason. On the contrary, this Court has always refused to review cases appealed from State Courts on that ground. In *Bacon vs. Texas*, 163 U. S. 207 it said that this Court has no jurisdiction, because a State Court changes its views in regard to the proper construction of its State statute, although the effect of such judgment may be to impair the value of what the State Court had before that held to be a valid contract, and again referred to *Mississippi & Missouri RR Co. vs. McClure*, *supra*.

In *Patterson vs. Colorado*, 205 U. S. 454, Justice Holmes said that

"the grounds on which the Circuit Courts are held authorized to follow an earlier State decision rather than a later one, or to apply the rules of commercial law as understood by this Court rather than those laid down by the local tribunals, are not grounds of constitutional right but considerations of justice and expediency."

"Even if it be true * * * that the Supreme Court of Colorado departed from earlier and well established precedents to meet the exigencies of the case, whatever might be thought of the justice or wisdom of such a step, the Constitution of the United States is not infringed." Such a decision by the State Court is not "an infraction of the XIV Amendment."

See also *Brinkerhoff-Faris Trust Co. vs. Hill*, 281 U. S. 673. *Greater Northern Railroad Co. vs. Sunburst Oil Co.*, 287 U. S. 358. *Klemm vs. Winter Haven*, 309 U. S. 638.

In *Bristow Battery vs. Rogers County*, 37 Fed. 2d 504, a case very similar to this, the 10th Circuit Court of Appeals followed these cases. That suit was in the Federal Court and charged that the decision of the Oklahoma Court violated the 14th Amendment. The Court concluded,

"In substance, the bill of complaint asks a Federal Court to review the rulings of the State Supreme Court in cases to which complainant was not a party, and to hold that the Supreme Court was in error. Such a contention does not present a Federal question. There was no power in the Federal Court below to enter upon the review."

This court refused to review that decision, 282 U. S. 843.

The same purpose lies behind the present complaint but with no facts to sustain the claim of reversal;—merely an argument of counsel, and an indirect implication that the Florida Court decided the case the way the parties wanted it decided.

If no power exists to review a decision of a State Court which has a retrospective effect and its decision cannot be reviewed by an attack in a Federal Court on the ground it violates the 14th Amendment, how can the Federal Court hold otherwise, except under the theory of *Swift vs. Tyson*?

In order to hold that *Gelpcke* is a precedent for this case, the Court must reverse its decisions in *Laidley*, *Great Northern*, *Tidal Oil* and numerous other cases. It must also reverse the *Bacon*, *Patterson* and other cases and follow *Swift vs. Tyson* and hold that it has jurisdiction to review decisions of State Courts in an appeal from them; otherwise there will be two rules of law, one applicable to suits between citizens of a state in State Courts and the other to suits between citizens of different States in Federal Courts.

D. *Erie vs. Tompkins* has Reversed *Swift vs. Tyson*, and Reinstated the Rule Followed Prior Thereto.

In the light of the foregoing discussion, *Gelpcke vs. Dubuque* must be regarded as an exercise of power under the rule of *Swift vs. Tyson*. It can no longer be regarded as a precedent; for *Erie vs. Tompkins*, supra, reinstated the rule that had been followed prior to *Swift vs. Tyson*. Decisions made shortly after the adoption of the Constitution and the passage of the Judiciary Act, by a court that included members of the Congress that enacted that law, disclose their understanding of the purpose of Sec. 34 and of the limitation there imposed on the power of Federal Courts. Here are a few statements taken from the early opinions.

Polk vs. Wendal, 9 Cranch 87

"In cases depending upon the statute of a State and more especially in those regarding titles to land this Court adopts the construction of the State where that construction is settled."

Thatcher vs. Powell, 6 Wheat 119

"In construing the acts of a legislature of a State the decisions of a state tribunal have always governed this Court."

Daly vs. James, 8 Wheat 535

"The opinions of State Courts will be as obligatory upon this Court as they would be accorded to be in their own Courts."

Elmendorff vs. Taylor, 10 Wheat 153

"The adoption by this Court of the construction of State law by a State Court is founded on the principle that is universally recognized; that the Judicial Department of every government is the appropriate organization for construing legislative acts of the government. No Court in the universe which professed to be governed by principle would presume to undertake to say that the Courts of Great Britain or of any other nation have misunderstood their own statutes. We feel ourselves no more at liberty to distinguish from that construction than to distinguish from the words of the statute. This Court ought to adopt the same rule should we even doubt its correctness."

Jackson vs. Chew, 12 Wheat 153

"A contrary doctrine would be repugnant to the principles which have always governed this Court and would present a conflict between State Courts and those of the United States productive of incalculable mischief."

Prior to Green vs. Neal, 6 Peters, 291, this Court had followed decisions of the North Carolina and Tennessee Supreme Courts in *Patton vs. Easton*, 1 Wh. 476 and *Powell vs. Harman*, 2 Peters 241. When the Tennessee Court reversed its decision, this Court held that the Federal Courts should do the same and that

"the same reason which influences this Court to adopt the construction given to the local law in the first instance is not less strong in favor of following it in

"the second if the State Court change their construction."

since this would have the effect of establishing two rules of property in the same state.

"The inquiry is, *what is the settled law of the State at the time the decision (of the Federal Court) is made?*

if there be two rules of property,

"the consequences are not only deeply injurious to the citizens of the State, but are calculated to engender the most lasting discontent."

On the other hand

"Adherence of Federal Courts to the construction of local law given by State Courts will greatly help to improve harmony in the exercise of State and Federal Judicial powers."

Livingston vs. Moore, 7 Peters, 469, 540

"the relation in which our circuit courts stand to the States in which they respectively sit and act is precisely that of their own courts, especially when adjudicating on cases where State lands or State statutes come under adjudication. When we find principles distinctly settled by adjudications, and known and acted upon as the law of the land, we have no more right to question them or deviate from them than could be correctly exercised by their own tribunals."

In all of these cases, it will be noted that emphasis was placed upon preserving the proper relation between Federal Courts and State Courts; upon maintaining and enforcing one system of law in both systems of courts—the law of the State. *Swift vs. Tyson*, supra, on the other hand

emphasized the fact that this Court is national, that this Court is Supreme and that its decision should be final. History has shown that State Courts have nevertheless continued to decide cases within their jurisdiction without regard to the fact that a different result would occur if they were tried in Federal Courts. Since no Federal question exists, they know their decisions are final.

The dissenting opinions of Judge Miller in the *Gelpcke* and in *Butz vs. Muscatine*, 8 Wall. 575, of Justice Fields in *B & O vs. Baugh*, 149 U. S. 368, of Justice Holmes in *Kuhn vs. Fairmont*, 215 U. S. 345, and *Black & White Taricab vs. Broken & Yellow Taricab Co.*, 276 U. S. 518, criticized the rule of the *Swift* case and pointed out the evils it produced; they predicted its ultimate abandonment. The opinion of Justice Brandeis in the *Eric* case shows that their prophecies have been fulfilled for the reasons given.

E. Under the Eric Case, this Court Must Follow the Law of Florida as Announced by Its Supreme Court.

The *Eric* case held that Federal Courts should follow the law of Florida as construed by the Supreme Court of that State.

Under that rule Florida decisions, especially those construing the Constitution and laws of that State, must be accorded the same respect that the Florida Court accords the decisions of this Court in matters of Federal law or that this Court accords to decisions of English Courts in matters of English law. It must be presumed that the Florida Court knows its own constitution, statutes and decisions and the purpose and intent of them, and that its decisions are the law of Florida, binding upon Federal Courts.

As this Court said in *Green vs. Neal*, supra.

"Apparent inconsistencies in the construction of the statute laws of the States (by State Courts) may be expected to arise."

but this does not justify disregarding them.

In *Wichita R. Co. vs. City Nat'l Bank*, 306 U. S. 103 this Court recently said:

"Even if we thought this distinction (made by the Texas Court), not well taken, nothing requires the State Court to be consistent in their decisions if they do not choose to be."

"State law is to be applied in the Federal as well as in the State Courts rather than to prescribe a different rule, however superior it may appear from the viewpoint of "general law" and however much the State Court may have departed from prior decisions of the Federal Courts."

Swift vs. Tyson, supra, has been reversed. No decision that rests upon *Swift vs. Tyson*, supra, can now be regarded as an authoritative precedent for decisions of a Federal Court in cases resting solely on diverse citizenship.

In the *Eric* case Justice Brandeis said that

"doctrine of *Swift vs. Tyson* is an unconstitutional assumption of power."

This Court since then, has not referred to the Constitution, as authority; but it has held that *Eric vs. Tompkins*, supra, would have been the rule of decision if Sec. 34 of the Judiciary Act had not been passed, *Russell vs. Todd*, 300 U. S. 280; that the rule controls decisions in cases in equity as well as in cases at law; *Russell vs. Todd*, supra, *West vs. American T. & T.*, 311 U. S. 223; that it controls the decision of a suit for a declaratory judgment, *Stoner vs. New York Life*, 311 U. S. 464.

What we consider the true rule is embodied in the statements of the present Chief Justice in *Fidelity Union Trust*

Co. vs. Field, 311 U. S. 163, and former Chief Justice Hughes in *West vs. A. T. T.*, supra,

"It is inadmissible that there should be one rule of State law for litigants in the State Courts and another rule for litigants who bring the same questions before Federal Courts owing to the circumstances of diversity of citizenship."

"The obvious purpose of Sec. 34 of the Judiciary Act is to avoid the maintenance within a State of two divergent or conflicting systems of law, one to be applied in the State Courts, the other to be availed of in the Federal Courts, only in case of diversity of citizenship. That object would be thwarted if the Federal Courts were free to use their own rules of decision whenever the highest Court of the State has spoken."

It is true that this Court has not expressly said that *Gelpcke vs. Dubuque*, supra, has been reversed. It has not heretofore been necessary. But the statement of Justice Stone in the *Wichita* case (p. 33 this brief) and that of Justice Reed in the *Vandenbark vs. Owen, Ill. Glass Co.*, 311 U. S. 538 case imply this. The latter said:

"While not insensible to possible complications, we are of the view that, until such time as a case is no longer sub judice, the duty rests upon Federal Courts to apply State law under the rules of decisions statute in accordance with the then controlling decision of the highest State Court."

Justice Stone also said:

"The highest Court of the State is the final arbiter of what is State law. When it has spoken, its pronouncement is to be accepted by Federal Courts as defining State law unless it has later given clear and persuasive

indication that its pronouncement will be modified, limited or restricted."

West vs. American T and T Co., 311 U. S. 236.

Even the fact that a State Court's decision has a retrospective effect does not justify a departure from the rule of *Eric vs. Tompkins*. Justice Holmes, in his dissenting opinion in *Black & White*, supra, said that

"decisions having" retrospective operation have been made for "nearly a thousand years."

Reversals by this Court of its own decisions have been given retrospective effect. The *Legal Tender* cases are an example. Others could be given.

By way of finality the Court in *Russell vs. Tadd*, supra, said:

"We are no longer free to apply a different rule".

Whether, therefore, the premise of the rule in *Eric vs. Tompkins* be that *Swift vs. Tyson*, supra, was an unconstitutional assumption of power by this Court or as indicated in its more recent decisions, a matter of national policy; the purpose of the Court is clear—to preserve our dual system of courts and the dual sovereignty recognized by the Federal Constitution; to have one rule of law applicable to citizens and non-citizens alike in both State and Federal Courts. There is no middle ground or "no-man's land" such as existed during the ascendancy of the theory that there was a common or general law superior to that of a State, for as Justice Brandeis held, "There is no common law of the United States." The Constitution created none. Except in England there was no uniform system of common law in 1790. English common law had been modified in the States and adapted to our system of government, to American ideals and institutions. The English common

law of 1790 limited individual rights in ways never recognized in America. In 1790 no two states had identical systems of common law, and the Constitutional convention could never, without violent debate, have agreed that either the English common law or the common law of any one state should be a uniform system of law in Federal Courts in cases based on diversity of citizenship. Yet the proceedings of the convention do not show that the subject was even discussed.

By their reference to the power of Federal Courts under the general provisions of Article III, petitioners imply that the Constitution gave Federal Courts power (sometimes called "inherent") to adopt their own system of law. The idea of an "inherent power" of Courts reminds us of the doctrine of the inherent "Right of Kings" except that its source is the Constitution and not Divinity. The Constitutional convention never intended to confer inherent or arbitrary power on any branch of our government. Nothing was further from their purpose. A judicial autarchy would have been as objectionable as a political one. The Constitution intended that "the people" should make their own laws. Federal Courts were given no power to legislate. Even the power of Congress to legislate was limited to specified subjects. The states remained supreme in other fields. If this Court had inherent power to adopt a system or rule of law, general or commercial, it could adopt the law of Holland or France, in whole or in part, and Congress would have no power to repeal it.

The first Congress had no doubt as to the meaning of Article III. It enacted the Judiciary Act at its First Session. Sec. 34 of that Act expressly required Federal Courts to follow the rules of decision of the State Courts. Every decision by this Court before *Swift vs. Tyson*, supra, did so in both common law and equity cases; in cases involving title to land, as well as in cases involving the construction

of State constitutions and statute; in matters of commercial law,—Judge Story to the contrary notwithstanding. So here, the State Court having decided a case identical with this, the Federal Court should follow that decision.

F. No "Contract Exception" Recognized in *Eric Case*.

Petitioners also say that the *Gelpcke* case is a "contract exception" to the general rule of *Eric vs. Tompkins*, supra. *Swift vs. Tyson*, supra, recognized an exception to Sec. 34 with results that caused this Court to reverse it, after an experience of one hundred years. There is no reason for it to make another exception. Sec. 34 of the Judiciary Act does not recognize one. Since this Court now holds that the rule of Sec. 34 would be the rule even if that Act had not been passed, it implies that there can be no exception. No decision of this Court rendered before *Swift vs. Tyson*, supra, recognized any exception other than cases involving Federal law. If there is to be any exception only this Court can determine what that exception shall be. Its experience under *Swift vs. Tyson*, supra, surely does not encourage it to again open this Pandora's box. If this Court's decision in *Swift vs. Tyson* was as the *Eric* case says, an "unconstitutional exercise of its power" it can make no exception. Recognition of an exception will result in a renewal of the former conflict between State and Federal Courts by recreating two systems of law in each state. If it be that this Court should have power to reverse decisions of State Courts because they are retrospective in matters of state law, that power should be exercised in appeals from State Courts; not in cases originating in Federal Courts that involve a collateral attack upon the decision of the State Court which has no opportunity to defend its decision. Only in that way could this Court control State Courts.

G. Florida Court Has Not Discriminated Against Non-Resident Bondholders.

The Florida Court has demonstrated that it does not discriminate against non-residents in bond suits; that it has not discriminated in favor of political subdivisions of the State.

Ever since *Columbia County vs. King*, 13 Fla. 451, decided in 1870, holders of Florida bonds have been accorded full protection. See *Klemm vs. Davenport*, 100 Fla. 627, 129 So. 904, *State vs. Cedar Key*, 122 Fla. 454, 165 So. 672, *State ex rel Buckwalter vs. Lakeland*, 112 Fla. 200, 150 So. 508, *Gray vs. Moss*, 115 Fla. 701, 156 So. 262, *Humphreys vs. State*, 108 Fla. 92, 145 So. 858, *State vs. Borjg*, 121 Fla. 781, 164 So. 859, and a multitude of other cases.

Petitioners refer to the fact that *Columbia County vs. King*, supra, and other Florida cases have cited *Gelpcke vs. Dubuque*, supra, and say this is the law of Florida. But those cases merely announce a rule which the Florida Court applies to its own decisions. They do not hold that the Florida Court will never give its decision a retrospective effect. If they have any value here it is because they prove that the Florida Court has not reversed *Sullivan vs. Tampa*, supra. In *Columbia County vs. King*, supra, the Florida Court said that to reverse its earlier decision in *Cotten vs. Leon County*, 6 Fla. 610 holding the act under which the bonds were issued constitutional

“would be an outrage upon public justice”.

When to make its decisions retrospective, is for the Florida Court to decide, and when it has not clearly reversed itself, a reversal should not be presumed or implied.

By claiming that the Florida Court has reversed *Sullivan vs. Tampa*, Petitioners, without proof, accuse the Florida

Court of having done that which it said it would not do; with having perpetrated "an outrage on public justice". This Court cannot so hold without convicting the Florida Court of injustice; without holding that either through ignorance or deliberate bad faith it has done that which it has given no indication that it intended to do and which indirectly (in *Miami vs. State*) it has disclaimed any intention to do. Surely under these circumstances, this Court will affirmatively presume that the Florida Court is more familiar with the purposes of Sec. 6, Art. IX, of the State Constitution, with the intention of the State Legislature in proposing that amendment and in passing Chap. 15772, with the circumstances existing in the cities and counties of that State, than is this Court; that it is better able to determine the probable effect of its decisions upon other situations arising in cities, other than Winter Haven, as well as in counties, districts, etc., which are faced with similar problems. Any doubt (such as that expressed by the Court of Appeals) as to its decision should be resolved in favor of its good faith since it cannot even appear here to answer the charges implied by Petitioners. This Court must assume that the Florida Supreme Court fully appreciated its responsibility, unless its own opinions prove the contrary. In *Gelpcke* and other cases, the State Court's opinions showed on their face an intention to change the law, to reverse former decisions holding the statutes constitutional; but neither in the *Outman*, *Andrews* or any other case is there an indication of an intention to reverse or even be inconsistent with the decision in *Sullivan vs. Tampa*.

H. No Reliance Alleged in Pleadings.

But even if this Court were disposed to recognize an exception to *Eric vs. Tompkins*, supra, in cases where parties have entered into a contract in reliance upon law announced

by the State Supreme Court prior to the date of a contract, and even if the Florida decisions be considered a reversal of *Sullivan vs. Tampa*, the decree of the District Court should be affirmed. Petitioners do not claim that they relied upon *Sullivan vs. Tampa*, supra; only their counsel makes that claim. There is not even an implication of that fact in the pleadings. The Complaint does not allege

(a) that Petitioners had heard of *Sullivan vs. Tampa*, supra, much less that they had construed it as authority for the contract or relied upon it, or

(b) that they were advised by counsel that their contract was valid and that their counsel relied upon that opinion; or

(c) that they surrendered old bonds and accepted the 1933 bonds in exchange therefor, relying upon *Sullivan vs. Tampa*, supra, or

(d) that they acquired the bonds they now hold, before the Florida Court in the *Taylor, Outman* or *Andrews* cases had decided that the provisions of its bonds were unenforceable.

These obvious omissions should effectually dispose of counsel's argument. Neither counsel's brief nor the Petition for the writ can take the place of allegations in pleadings of the parties. The wording of the Complaint is so patently evasive as to imply that Petitioners could not make these allegations. Under all rules of procedure, pleadings are construed against the pleader; the Federal rules should be so construed. If Petitioners did not rely upon *Sullivan vs. Tampa*, they cannot invoke the "principle of reliance" on which they rest their case. There should be some showing that they did rely other than the fact that the *Sullivan* case was decided in 1931 and their bonds are dated 1933. These Petitioners may not have acquired their bonds until after the Florida Court had decided contrary to their present contention. There is nothing in the Complaint to nega-

tive that fact. The repeated assertions of counsel do not supply the necessary allegations.

Second Question

But Petitioners say that if this Court must, under the decisions of the Florida Supreme Court, deny their first prayer on the ground that the provisions of the bond agreeing to pay a premium in the event of call are unenforceable, they are entitled to a judgment declaring that the City should pay them interest from the date of their bonds at the rate of the original bonds which were exchanged for refunding bonds, because of the provisions of Sec. 20 of the resolution authorizing their issue.

The Complaint merely alleges that Petitioners are

"entitled to all the rights and privileges of bearers and holders of the obligations (that is, the old bonds) surrendered in exchange for general refunding bonds."

It does not allege why, nor what those rights are; but, in their brief, Petitioners say that they are entitled to 6 percent on bonds of Series A and 5½ percent on bonds of Series B, since their issue in 1933. Petitioners do not say when the difference between these rates and the interest already paid by the city on the refunding bonds should be paid. Their vagueness is probably due to the fact that they realize that the bonds and the resolution expressly provide that this difference shall be *"enforceable and collectible"* only at the *maturity* of the bonds. The first maturity is in 1948, the last in 1963.

If Petitioners had openly claimed that the City should be required to pay this \$300,000 now, the inconsistency of that claim with the express terms of the bonds would have been apparent. But their prayer for an injunction (p. 25 Tr.) if granted, would have that effect.

Thus they ask this Court to rewrite the express provisions of the bonds and the resolution, (quoted on pp. . . . and . . . of this brief) and accelerate payment of these sums from five to twenty-five years, if the provision for payment of a premium in the event of call be held unenforceable. They have not asked the Court to enjoin a call of the bonds until they mature, because under the Complaint, as now framed, the City would be required to pay the bondholders *now* \$145. per \$1,000 bond of Series A, and \$95. per \$1,000. bond of Series B, (a total of \$300,000) instead of \$72.50 and \$47.50 which Petitioners say they had expected to receive if the bonds were called before April 1, 1943.

This alternative prayer purports to be based on equitable considerations. It was intended to create an impression in the mind of the Court that Petitioners would otherwise suffer a loss which they should be allowed to recoup. Judge Sibley of the Court of Appeals was misled thereby: He said that Petitioners should under Sec. 20 be able to collect what they would otherwise "lose" as a result of the Florida Court's decision. Whether he meant \$72.50 or \$145. per bond is not clear. But Judge Sibley entirely overlooked the fact that the Complaint does not allege that Petitioners would suffer a loss. It merely alleges (Par. 7(a)) that the bonds which Petitioners own "were issued in exchange for and upon the surrender and cancellation of original securities", but it does not allege that Petitioners *owned* and surrendered the original securities or that the bonds they now own were *issued to them* by the City in exchange therefor.

Sec. 7(d) alleges that Petitioners "are entitled to all the rights and privileges of bearers or holders" of the original bonds surrendered but not original bonds *which Petitioners surrendered*. There is not even an intimation that Petitioners would suffer a loss. Obviously the reason for this omission is that Petitioners did not own original bonds, and did

not surrender them in exchange for their present bonds; else they would have so alleged. They must have purchased new refunding bonds after they had been issued in exchange for original bonds. Since Petitioners do not allege that they will suffer a loss the Court cannot assume that they will, much less can it grant an injunction to prevent a loss.

It is even conceivable, and not improbable, that Petitioners may have purchased these refunding bonds after the Florida Supreme Court decided the *Outman* case or even after it decided the *Andrews* case. In that event, Petitioners would be charged with knowledge of those decisions and would have no right to the relief they seek. Their failure to allege how they acquired their bonds, when they acquired them; that in purchasing they relied upon the provision of Sec. 20; their failure to allege loss, as well as the evasive allegation that the bonds having been issued in exchange for old bonds, they are entitled to all rights of former holders,—all show that this case is an effort to enforce the letter of Sec. 20 upon a pure legal conclusion and not as Judge Sibley thought upon a claim for equitable treatment. Giving Petitioners the benefit of every allegation ~~in their~~ complaint they do not state a case which would justify a court of equity declaring they are entitled to relief.

But if we assume that the Court may infer that Petitioners acquired their present bonds from the city in exchange for original bonds formerly owned by them, other facts in the record are such as to require the Court to deny relief.

Petitioners admit that the refunding bonds were not sold, that they were exchanged for old bonds, and that the exchange was made pursuant to a contract of the City with R. E. Crummer and George W. Simons. That contract violated public policy of the State of Florida, and the resolution of which Sec. 20 is a part, having been passed for the purpose of carrying out that illegal contract, cannot

be separated from it. Petitioners having acquired their bonds under the illegal contract cannot separate themselves from the illegality of it without alleging facts to show that the transactions were not connected.

The Resolution (p. 50 Tr.) attached to the Complaint recites and ratifies the contract and the creation of the Agency in accordance therewith. Sec. 17 of the Resolution (p. 81 Tr.) orders the bonds placed in escrow to be delivered "under the sponsorship and direction" of the Agency "pursuant to and as contemplated by the agreement heretofore entered into" with it on May 16, 1933.

The provisions of the contract are substantially similar to those of another contract which R. E. Crummer & Co. made with Lake County. It provided generally for turning over to the creditors or to an "Agency" composed of "three substantial creditors" complete control of the duties of the city officials for a period of five years at the expense of the City. Even the legal adviser of the city and the attorneys who were to approve the refunding bonds became employees of the bondholders agency. The Florida Court condemned the contract between R. E. Crummer & Company and Lake County in *Taylor vs. Williams*, supra, and *Howey vs. Williams*, 142 Fla. 415, 195 So. 181. It said

"that all official authority, duties and functions shall be exercised and performed by duly commissioned officers; the delegation of official authority, duties or functions by officials is not permitted by the laws of this state."

"Statutes authorizing the County Commissioners to issue bonds and refunding bonds for the county, etc. require official action in the issue of bonds and in all matters pertaining thereto which are functions or duties involving discretion and fiduciary attention to conserve the best interests of the county, its taxpayers and citizens."

"The law does not contemplate or permit the appointment of a foreign corporation representing the holders of a substantial portion of the outstanding bonds as fiscal agent for the counties or district in managing or controlling any of the official functions involved in the issuing of refunding bonds."

"The refunding resolutions and contracts are not in accord with law. The contract made for refunding bonds is held to be not within the laws of Florida."

Another contract, similar in effect, was held void by the Tenth Circuit Court of Appeals in *City of Vero Beach vs. Rittenoure Inc. Co.*, 113 Fed. (2d) 269. The Fifth Circuit Court of Appeals held void still another contract, similar in effect, in *Bradford County vs. Nureen*, 133 Fed. (2d) 163, because the contract was contrary to public policy of the State; it held there could not even be a recovery on a quantum meruit for services rendered. A similar Agency contract between R. E. Crummer & Company and the City of Avon Park was involved in *American United Insurance Co. vs. Avon Park*, 341 U. S. 138.

In this case the Agency has already received payment of a fee of \$35,100. for its services under the illegal contract. In *Taylor vs. Williams*, 142 Fla. 756, 196 So. 214, the Florida Court held that fees paid under such a contract could be recovered at the instance of a taxpayer.

Under these decisions there can be no doubt of the illegality of the contract between the City and Crummer and Simons. That contract cannot be made the basis for a right of action against the City; on the contrary it can be made the basis for an action by a taxpayer against the Agency to recover the money illegally paid to it or them. Ordinarily, an illegal sale of bonds gives a holder no title. In this case, because the contract had been executed, the Florida Court held that the bonds were not void in toto, since the agreement to pay a premium for redemption was unenforceable

and could be severed from the contract. Sec. 20 of the Resolution itself provided

"That if any clause, section, paragraph or provision of this resolution or of the General Refunding Bonds hereby authorized be declared unenforceable by any Court of final jurisdiction, it shall not affect or invalidate any remainder thereof."

The Court held that the city could call its bonds by paying par plus accrued interest. This the city is now attempting to do.

If Petitioners acquired title to their bonds under the illegal contract, and since the resolution upon which they rely was passed to make that illegal contract effective, neither Sec. 20 nor the resolution can be made the basis of a claim by Petitioners against the City. The contract to which the resolution relates being illegal, no Court will lend its assistance towards carrying out its terms, nor to enforce any alleged rights springing from the resolution and connected with the contract. *Stewart vs. Stearns*, 56 Fla. 570, 48 So. 19; *Finley Method vs. Standard Asphalt*, 104 Fla. 126, 139 So. 795. It is not necessary here to determine whether Petitioners could maintain this action without proving the illegal contract, since the Petitioners themselves filed the illegal contract as an exhibit (p. 149 Tr.) to their Complaint and the resolution—a section of which is the basis for their case—refers to that contract and expressly says that it was passed to make the contract effective and directs that the bonds be issued in accordance therewith. To permit recovery under Sec. 20 would in effect be to ignore the violation of public policy involved in the contract, would put a premium on its execution and would give to these holders who took advantage of that contract twice as much money as they would receive had the call provision

of the bonds been enforceable at law. Petitioners cannot select for enforcement one part of the resolution, even if it were legal, and separate it from the other portions or from the illegal contract with which it is indissolubly connected. The contract and the resolution were both parts of the same transaction. They cannot waive the illegal contract, directly or by an alternative prayer in order to enforce a section of the resolution. See *Hall vs. Coppell*, 7 Wall. 542.

The illegality of the refunding contract permeates the entire transaction if Petitioners bonds were acquired under it.

Here we point to the fact that the Complaint does not allege facts to show that Petitioners are separated from the illegal transaction. There is no negation of their knowledge of the contract and there are no affirmative allegations that their bonds were purchased from others in good faith and for a valuable consideration.

"If an agreement grows immediately out of or is connected with an illegal or immoral act or agreement, a Court cannot lend its aid to enforce it though it is in fact a new agreement. If the connection between an original illegal transaction and a new promise can be traced, if the latter is connected with, and grows out of, the former, no matter how many times and in how many different forms it may be renewed, it cannot form the basis of a recovery." 12 Am. Jur. Sec. 210, p. 717.

Only if the course of action of Petitioners is disconnected from the illegal act, founded upon a new consideration and they not obliged to resort to the illegal agreement can an action be maintained. 12 Amer. Jur. Sec. 211, p. 718. See cases cited in Note 1 including U. S. cases.

There was no new or separate consideration for the resolution or for Sec. 20. The only consideration that could

support it was the acceptance of refunding bonds by holders of original bonds through the Agency which had the illegal contract and controlled the disposition of the refunding bonds. The city itself had no power to waive the illegal provisions of the bonds. Public policy would prohibit its attempt to waive illegality.

Continental Wallpaper Co. vs. Louis Voight & Sons,
212 U. S. 227

McMullen vs. Hoffman, 174 U. S. 639

Hall vs. Coppell, 7 Wall. U. S. 542

If the city cannot waive illegality of the provisions of the bonds or of the refunding contract, it cannot by resolution contract to waive it. It probably could not have so contracted, even if it had been given authority so to do by the Legislature. But neither the City Charter nor Chap. 15772, Acts of 1931, Chap. 132, Florida Statutes 1941, purports to confer such authority upon the city, much less does either grant to the city authority to subject itself to a liability for twice as much as the illegal provision of the bonds purported to impose. The broad powers given to the City by Chap. 15772 do not militate against this position but tend to emphasize the accuracy of the foregoing statement because that Act omitted authority for such an agreement.

There is not a single statement in any decision by the Florida Court that can be construed as implying possible liability under the resolution. In every decision there will be found statements that negative any possibility of it. The Florida Court expressly said that the bonds "can be called at par plus accrued interest." Was it necessary for the Court to add that it meant that the City could not be made to pay more than that? Was it necessary to negative the possibility that liability of the City under Sec. 20 had not been determined in order for its decision to be clear?

The entire refunding plan was illegal; the creditors obtained control of the affairs of the City which was helpless to oppose their wishes; they jockeyed the debt of the city for their own advantage through the medium of the illegal contract by which the city officials agreed to surrender their powers as duly constituted officers of the city to the control of adverse interests and to pay them for the exercise of that control. No Agency composed of bondholders could fairly represent the interests of the taxpayers.

Petitioners rely (p. 48 of brief) upon *Jefferson County vs. Hawkins*, 23 Fla. 223, 2 So. 362,—a case in no sense parallel. In that case the issue was single. The county being legally indebted on bonds, without statutory authority issued refunding bonds which creditors accepted. The Court held that the county was without authority to issue the refunding bonds. Hence the original bonds had not been paid. Holders of refunding bonds were allowed to recover the debt evidenced by the original bonds. The only question was whether the bondholders could recover all their money or none. There was no illegal contract, no unconstitutional provision in the refunding bonds or resolution. The Florida Court has held repeatedly that a quantum meruit count at law is "likeped to a bill in equity" which can be proved by any evidence

"showing that the defendant has possession of the money of the plaintiff which, in equity and good conscience, he ought to pay over."

Callen vs. S. J. L. Ry. Co., 63 Fla. 422, 58 S. 182; *St. Johns Electric Co. vs. St. Augustine*, 81 Fla. 588, 88 So. 387; *Brevard County B & L Ass'n vs. Sumrall*, 101 Fla. 1189, 133 So. 888. Applying this principle, the Court granted a judgment. The facts in this case negative the possibility of applying that rule here.

CONCLUSION

The majority of the Circuit Court of Appeals held that this case should be dismissed without prejudice to the right of Petitioners to seek relief in the State Court, because the State law is not clear. We submit that the State Court has already settled every question of law raised by the Bill except the question of whether Federal Courts should follow their decisions. This they could not settle. The validity of the agreement to pay a premium has been held void. The refunding contract has been held void and contrary to public policy of the State. The Florida Court has held that the holders of refunding bonds are entitled to be paid the principal of their debt with interest at the coupon rate, and the City offers to pay it. The Florida Court has also held affirmatively that the City can call its bonds at par plus accrued interest at the coupon rate to date of call. This is the law of Florida and it is clear and settled.

The Circuit Court of Appeals should have affirmed the decision of the District Court. Petitioners have rested their alternative prayer upon Sec. 20 of the resolution and upon the fact that they hold refunding bonds, notwithstanding the fact that their pleadings show the illegal contract under which the bonds were issued, and that they seek twice as much money under this prayer of the Complaint as they do in their claim on the bonds. They have failed to allege that they would suffer any loss of interest if their claim be denied, and have allowed final decree to be entered without attempting to amend further.

The decisions of the Florida Supreme Court in the *Andrews* case as well as in the *Outman*, *New Smyrna* and other cases, are the law of Florida and are conclusive in this Court that Petitioners have no right to a declaratory decree under their first prayer.

The alternative prayer must be denied because Sec. 20 cannot be separated from the illegal contract of the City with the Agency. The bondholders prepared the contract. The City had no alternative. Petitioners either acquired their bonds under that illegal contract or they acquired them in the open market after the bonds had been issued. The bill fails to show that Petitioners are bona fide holders for a valuable consideration unconnected with the original transaction. The Complaint does not allege that they will suffer a loss. The decree of the Circuit Court of Appeals should be reversed and that of the District Court should be affirmed.

Respectfully submitted,

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Attorneys for Respondents.

SUPREME COURT OF THE UNITED STATES.

No. 42.—OCTOBER TERM, 1943.

W. J. Meredith, James G. Martin and A. R. Ohmart, Petitioners, vs. The City of Winter Haven.	} On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.
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[November 8, 1943]

Mr. Chief Justice STONE delivered the opinion of the Court,

Petitioners sought a judgment granting equitable relief in the District Court below, whose jurisdiction rested solely on diversity of citizenship. The question is whether the Circuit Court of Appeals, on appeal from the judgment of the District Court, rightly declined to exercise its jurisdiction on the ground that decision of the case on the merits turned on questions of Florida constitutional and statutory law which the decisions of the Florida courts had left in a state of uncertainty.

Petitioners brought this suit in the District Court for Southern Florida, alleging by their bill of complaint that they are owners and holders of General Refunding Bonds issued in 1933 by respondent, the City of Winter Haven, Florida; that by their terms the bonds are callable by the city on any interest date on tender of their principal amount and accrued interest, including a specified amount (depending on the date of call) of the interest payable upon the deferred-interest coupons attached to the bonds; that the city is about to call and retire the bonds without providing for payment of the deferred-interest coupons. The bill of complaint prayed a declaration that this could not lawfully be done and an injunction restraining the city from doing it.

In the event that the court should determine that the obligation of the deferred-interest coupons is unenforceable, then it was prayed that the court declare that petitioners are entitled to enforce the obligation for payment, principal and interest, of the amount of the original bonded indebtedness of the city which was refunded by the General Refunding Bonds now held by petitioners, and that the court enjoin the city and its officials,

respondents here, from failing or refusing to pay the interest due on such refunded bonds, as provided by the resolution of the city commissioners authorizing the issue and sale of the General Refunding Bonds in 1933.

The District Court granted respondents' motion to dismiss the complaint on the grounds that it failed to state a cause of action and that the questions of law involved had been determined adversely to petitioners by the Supreme Court of Florida. The Court of Appeals, without passing on the merits, reversed and directed that the cause be dismissed without prejudice to petitioners' right to proceed in the state courts to secure a determination of the questions of state law involved. 134 F. 2d 202.

The Court of Appeals agreed with petitioners that the bill of complaint presented a justiciable controversy requiring determination, that they were entitled to a judgment declaring the law of Florida with respect to the validity of the deferred-interest coupons, and that if petitioners' contentions were sustained they were entitled to a declaration in their favor and an injunction implementing the declaration. But upon an examination of the Florida decisions the court concluded that the applicable law of Florida was not clearly settled and stable, but was quite the contrary, citing *Sullivan v. Tampa*, 101 Fla. 298; *Columbia County Commissioners v. King*, 13 Fla. 451; *State ex rel. Nyrson v. Greer*, 88 Fla. 249; *Humphreys v. State ex rel. Palm Beach Co.*, 108 Fla. 92; *Alta-Cliff Co. v. Spurway*, 113 Fla. 633; *Lec v. Bond-Howell Lumber Co.*, 123 Fla. 202, and *Andrews v. The City of Winter Haven*, 148 Fla. 144. It expressed doubt as to what the Florida law, applicable to the facts presented, now is or will be declared to be, and in view of this uncertainty, since no federal question was presented and the jurisdiction was invoked solely on grounds of diversity of citizenship, it thought that petitioners should be required to proceed in the state courts.

Although the opinion below refers to the suit as one for a declaratory judgment, the declaration of rights prayed, as is usually the case in suits for an injunction, is an indispensable prerequisite to the award of one or the other of the forms of equitable relief which petitioners seek in the alternative. Hence, so far as we are concerned with the necessity and propriety of a determination by a federal court of questions of state law, the

case does not differ from an ordinary equity suit in which, both before and since *Eric R. R. Co. v. Tompkins*, 304 U. S. 64, federal courts have been called upon to decide state questions in order to render a judgment.

The facts as presented by the amended bill of complaint and the motion to dismiss raise two issues of state law, one and possibly both of which must be decided if petitioners are to have the benefit which they seek of the jurisdiction conferred on district courts in diversity cases. The first question arises from the fact that the Refunding Bonds of 1933 were issued without a referendum to the freehold voters of the city. Article IX, § 6 of the Florida constitution provides that municipalities "shall have power to issue bonds only after the same shall have been approved by the majority of the votes cast in an election", in which a majority of the freeholders of the municipality shall participate, but dispenses with this requirement in the case of "refunding" bonds. The question is whether, under the applicable decisions of the Florida courts, the provision for deferred-interest coupons could rightly be included in the obligation of the Refunding Bonds of 1933 without a referendum. If it be decided that the provision could not be included and that the coupons are invalid, the second question is whether petitioners, as holders of refunding bonds, are entitled, under § 20 of the resolution of the city commissioners authorizing the Refunding Bond issue,¹ to recover the principal and interest of an equivalent amount of the bonds refunded. This question, unlike the first, so far as appears, has not been passed upon by the Florida courts.

Several decisions of the Supreme Court of Florida have declared that where bonds to be refunded contain no provision for deferred-interest coupons, refunding bonds containing such coupons would impose "new and additional or more burdensome terms" [*Outman v. Conc.*, 141 Fla. 196, 199] which may not be included in refunding bonds unless they are approved by referendum in accordance with Article IX, § 6. *Outman v. Conc.*,

¹ "Section 20. That if any clause, section, paragraph or provision of this resolution or of the General Refunding Bonds hereby authorized be declared unenforceable by any Court of final jurisdiction, it shall not affect or invalidate any remainder thereof, and if any of the bonds hereby authorized be adjudged illegal or unenforceable in whole or in part, the holders thereof shall be entitled to assume the position of holders of a like amount of the indebtedness hereby provided to be refunded and as such enforce their claim for payment."

supra; *Taylor v. Williams*, 142 Fla. 402; *Andrews v. The City of Winter Haven, supra*.

As appears from the amended bill of complaint, after the present suit was begun the Supreme Court of Florida decided the case of *Andrews v. The City of Winter Haven, supra*. This case involved the same issue of Refunding Bonds as are here in question. The Florida court held that the deferred interest coupons are invalid; that the purported obligation of the invalid coupons is severable from the obligations to pay the principal of the bonds and current interest on the other coupons, which obligations are valid and enforceable; and that the bonds are subject to call upon tender of the stipulated principal and interest without including any amount purporting to be payable on the deferred-interest coupons.

It is the contention of petitioners that the *Andrews* case is not controlling because it, as well as *Outman v. Cone, supra*, and *Taylor v. Williams, supra*, which it cited and followed, is inconsistent with earlier decisions of the Supreme Court of Florida antedating the Refunding Bonds of 1933, particularly *Sullivan v. City of Tampa, supra*; *State v. City of Miami*, 103 Fla. 54; *State v. Special Tax School District No. 5 of Dade County, Fla.*, 107 Fla. 93; *Bay County v. State*, 116 Fla. 656; *State v. Citrus County*, 116 Fla. 676; *State v. Sarasota County*, 118 Fla. 629. Petitioners also insist that, in deciding the *Andrews* case, the attention of the Supreme Court of Florida was not directed to the doctrine which it had earlier announced in *Columbia County Commissioners v. King, supra*, and in *State ex rei, Nuvren v. Greer, supra*, that by the law of Florida a contract is governed by the laws declared at the time the contract was made, and that consequently the court did not apply the doctrine. And finally it is said that the weight of the *Outman* and *Andrews* cases as precedents is impaired by the fact that although they appear on the record to be adversary litigations they were not in fact vigorously contested.

While the rulings of the Supreme Court of Florida in the *Andrews* case must be taken as controlling here unless it can be said with some assurance that the Florida Supreme Court will not follow them in the future, see *Wichita Royalty Co. v. City National Bank*, 306 U. S. 103, 107; *Fidelity Trust Co. v. Field*, 311 U. S. 169, 177-178; *West v. American Tel. and Tel. Co.*,

311 U. S. 223, 236, we assume, as the Court of Appeals has indicated, that the Supreme Court of the State may modify or even set them aside in future decisions. But we are of opinion that the difficulties of ascertaining what the state courts may hereafter determine the state law to be do not in themselves afford a sufficient ground for a federal court to decline to exercise its jurisdiction to decide a case which is properly brought to it for decision.

The diversity jurisdiction was not conferred for the benefit of the federal courts or to serve their convenience. Its purpose was generally to afford to suitors an opportunity in such cases, at their option, to assert their rights in the federal rather than in the state courts. In the absence of some recognized public policy or defined principle guiding the exercise of the jurisdiction conferred, which would in exceptional cases warrant its non-exercise, it has from the first been deemed to be the duty of the federal courts, if their jurisdiction is properly invoked, to decide questions of state law whenever necessary to the rendition of a judgment. *Commonwealth T. Co. v. Bradford*, 297 U. S. 613, 618; *Risty v. Chicago, R. I. & Pac. Ry. Co.*, 270 U. S. 378, 387; *Kline v. Burke Construction Co.*, 260 U. S. 226, 234-235; *McClellan v. Garland*, 217 U. S. 268, 281-282. When such exceptional circumstances are not present, denial of that opportunity by the federal courts merely because the answers to the questions of state law are difficult or uncertain or have not yet been given by the highest court of the state, would thwart the purpose of the jurisdictional act.

The exceptions relate to the discretionary powers of courts of equity. An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity. *Beal v. Missouri Pacific R. R. Co.*, 312 U. S. 45, 50. Exercise of that discretion by those, as well as by other courts having equity powers, may require them to withhold their relief in furtherance of a recognized, defined public policy. *DiGiovanni v. Camden Insurance Ass'n*, 296 U. S. 64, 73, and cases cited. It is for this reason that a federal court having jurisdiction of the cause may decline to interfere with state criminal prosecutions except when moved by most urgent considerations; *Spielman Motor Co. v. Dodge*, 295 U. S. 89, 95; *Beal v.*

Missouri Pacific R. R. Co., *supra*, 49-51; *Douglas v. City of Jeannette*, 319 U. S. 157; or with the collection of state taxes or with the fiscal affairs of the state, *Matthews v. Rodgers*, 284 U. S. 521; *Stratton v. St. Louis, S. W. Ry. Co.*, 284 U. S. 530; *Great Lakes Dredge & Dock Co. v. Huffman*, 319 U. S. 293; or with the state administrative function of prescribing the local rates of public utilities, *Central Kentucky Co. v. Railroad Commission*, 290 U. S. 264, 271 *et seq.* and cases cited; or to interfere, by appointing a receiver, with the liquidation of an insolvent state bank by a state administrative officer, where there is no contention that the interests of creditors and stockholders will not be adequately protected, *Pennsylvania v. Williams*, 294 U. S. 176; *Gordon v. Ominsky*, 294 U. S. 186; *Gordon v. Washington*, 295 U. S. 30; cf. *Kelleam v. Maryland Casualty Co.*, 312 U. S. 377, 381. Similarly it may refuse to appraise or shape domestic policy of the state governing its administrative agencies. *Railroad Commission v. Rowan & Nichols Co.*, 311 U. S. 570; *Burford v. Sun Oil Co.*, 319 U. S. 315. And it may of course decline to exercise the equity jurisdiction conferred on it as a federal court when the plaintiff fails to establish a cause of action. *Cavanaugh v. Looney*, 248 U. S. 453; *Gilchrist v. Interborough Company*, 279 U. S. 159. So too a federal court, adhering to the salutary policy of refraining from the unnecessary decision of constitutional questions, may stay proceedings before it, to enable the parties to litigate first in the state courts questions of state law, decision of which is preliminary to, and may render unnecessary, decision of the constitutional questions presented. *Railroad Commission v. Pullman Co.*, 312 U. S. 496; cf. *Thompson v. Magnolia Petroleum Co.*, 309 U. S. 478. It is the court's duty to do so when a suit is pending in the state courts, where the state questions can be conveniently and authoritatively answered, at least where the parties to the federal court action are not strangers to the state action. *Chicago v. Fieldcrest Dairy*, 316 U. S. 168. In thus declining to exercise their jurisdiction to enforce rights arising under state laws, federal courts are following the same principles which traditionally have moved them, because of like considerations of policy, to refuse to give an extraordinary remedy for the protection of federal rights. *United States ex rel. Greathouse v. Dern*, 289 U. S. 352, 359-361; see *Virginian Railway Co. v. Federation*, 300 U. S. 515, 551-552 and cases cited; cf. *Securities and Exchange Comm. v. United States Realty Co.*, 310 U. S. 434, 455 *et seq.*

But none of these considerations, nor any similar one, is present here. Congress having adopted the policy of opening the federal courts to suitors in all diversity cases involving the jurisdictional amount, we can discern in its action no recognition of a policy which would exclude cases from the jurisdiction merely because they involve state law or because the law is uncertain or difficult to determine. The decision of this case is concerned solely with the extent of the liability of the city on its Refunding Bonds. Decision here does not require the federal court to determine or shape state policy governing administrative agencies. It entails no interference with such agencies or with the state courts. No litigation is pending in the state courts in which the questions here presented could be decided. We are pointed to no public policy or interest which would be served by withholding from petitioners the benefit of the jurisdiction which Congress has created with the purpose that it should be availed of and exercised subject only to such limitations as traditionally justify courts in declining to exercise the jurisdiction which they possess. To remit the parties to the state courts is to delay further the disposition of the litigation which has been pending for more than two years and which is now ready for decision. It is to penalize petitioners for resorting to a jurisdiction which they were entitled to invoke, in the absence of any special circumstances which would warrant a refusal to exercise it.

Erie v. Tompkins, supra, did not free the federal courts from the duty of deciding questions of state law in diversity cases. Instead it placed on them a greater responsibility for determining and applying state laws in all cases within their jurisdiction in which federal law does not govern. Accepting this responsibility, as was its duty, this Court has not hesitated to decide questions of state law when necessary for the disposition of a case brought to it for decision, although the highest court of the state had not answered them, the answers were difficult, and the character of the answers which the highest state courts might ultimately give remained uncertain. *Wichita Royalty Co. v. City National Bank, supra*; *West v. American Tel. & Tel. Co., supra*, 236-237; *Fidelity Trust Co. v. Field, supra*, 177-180; *Six Companies v. Joint Highway District*, 311 U. S. 180, 188; *Stoner v. New York Life Ins. Co.*, 311 U. S. 464; *Palmer v. Hoffman*, 318 U. S. 109, 116-118. Even though our decisions could not finally

settle the questions of state law involved, they did adjudicate the rights of the parties with the aid of such light as was afforded by the materials for decision at hand, and in accordance with the applicable principles for determining state law. In this case, as in those, it being within the jurisdiction conferred on the federal courts by Congress, we think the plaintiffs, petitioners here, were entitled to have such an adjudication.

The judgment will be reversed and the cause remanded to the Circuit Court of Appeals for further proceedings in conformity to this opinion.

Reversed.

Mr. Justice BLACK and Mr. Justice JACKSON are of the opinion that the judgment should be affirmed for the reasons stated in the opinion of the Circuit Court of Appeals, 134 F. 2d 202.

A true copy.

Test:

Clerk, Supreme Court, U. S.